

**The Making of India's 'Right to Food Act'**

**Sara Bailey**

**A thesis submitted for the degree of Doctor of Philosophy**

**School of Law (Human Rights Centre)**

**University of Essex**

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## Abstract

This thesis critically analyses the scholarly literature on the creation of human rights law in light of the author's empirical investigation into the making of India's 'right to food act'. Human rights law is increasingly being used to combat poverty, but influential critics of human rights law are sceptical about the law's capacity in this regard. Two critiques are of particular relevance to this study. The first is that human rights are minimalist i.e. they only provide for basic needs and do not address economic inequality (or, therefore, 'relative poverty'). The second critique – which proceeds from the first – is that in contexts characterised by economic inequality, the poor are often unable to exercise their formally-accorded rights because they lack the 'moral and material resources' needed to do so. This thesis appraised these critiques and found that they are, in the main, valid. However, to reject human rights law on this basis is short-sighted. The construction of human rights law is a social process and it is argued in this study that there is no inherent reason why human rights law could not, in the future, develop in a manner which overcomes the problems presently associated with it. In order to gain insights into the reasons why human rights law is constructed in the way that it is, this thesis studied the social processes involved in the creation of India's 'Right to Food Act'. The findings shed new light on the potential and limitations of human rights. The content of the Act supports the contention that human rights are minimalist. However, an analysis of the social processes involved in its creation demonstrates that its content was not in some way 'preordained'. It was shaped by a diversity of ideas and processes of contestation between a diversity of actors. It is conceivable that had particular circumstances been different, the Right to Food Act could have addressed at least some of the causes of economic inequality in India. This thesis therefore concludes that in order to meaningfully evaluate the potential and

limitations of human rights law, further studies of the social processes involved in its creation need to be conducted.

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## Table of Contents

List of Tables .....	9
Abbreviations .....	10
Introduction .....	11
Chapter 1: Literature Review .....	21
1.1. Introduction .....	21
1.2. What are Human Rights? .....	25
1.3. The Capacity of Economic and Social Rights to Tackle Poverty .....	27
1.3.1. Economic Inequality and its Structural Causes .....	28
1.3.2. Exercising Economic and Social Rights in Unequal Contexts .....	34
1.4. The Validity of the Critiques .....	43
1.5. Looking to the Future: The Potential and Limitations of Economic and Social Rights.....	49
1.5.1. Civic Expansion .....	50
1.5.2. The ‘Legalisation’ or ‘Institutionalisation’ Thesis .....	51
1.6. The Limitations of the ‘Legalisation Thesis’ and Studying the Social Processes involved in the Creation of Human Rights Law .....	59
1.7. Summary .....	60
Chapter 2: Background and Context to the Campaign for a Right to Food Act.....	61
2.1. Introduction .....	61
2.2. Socioeconomic Context: ‘India Shining’ or the ‘World’s Hunger Capital’? .....	61
2.3. Political and Legal Context.....	65
2.4. The Evolution of the Right to Food in India.....	67
2.5. The Right to Food Campaign.....	74
2.6. The Decision to Campaign for a Right to Food Act .....	76
2.7. Summary.....	77
Chapter 3: Methodology.....	79
3.1. Introduction .....	79
3.2. Motivation for the Study.....	79
3.3. Research Design .....	81
3.3.1. Case Study Selection.....	81
3.3.2. Positionality .....	82
3.3.3. The Research Questions and their Evolution .....	88
3.3.4. Data Collection .....	89
3.3.5. Data Analysis .....	100
3.4. Ethics .....	109

3.5.	Limitations.....	112
3.6.	Summary.....	113
<b>Chapter 4: Conceptualising the Right to Food in India.....</b>		<b>114</b>
4.1.	Introduction .....	114
4.2.	Two Competing Conceptions of the Right to Food .....	119
4.2.1.	The ‘Individual Entitlements’ Conception.....	119
4.2.2.	The Right to Food as ‘Structural Change’ .....	132
4.2.3.	The Relationship between Individual Entitlements and Structural Change .....	141
4.3.	Uppercase ‘Human Rights’ and Radical Conceptions of Human Rights.....	143
4.3.1.	Hopgood’s Typology of Approaches to Human Rights.....	143
4.3.2.	The Campaign for the Right to Food Act: A ‘Lowercase’ Endeavour.....	147
4.3.3.	Uppercase ‘Human Rights’ and the Integrity of International Human Rights Law ...	148
4.4.	The ‘Structural Conception’ of the Right to Food: Radical but Particularistic? .....	152
4.5.	Summary.....	161
<b>Chapter 5: From Conceptions of Human Rights to Concrete Claims.....</b>		<b>164</b>
5.1.	Introduction .....	164
5.2.	Three Schools of Thought .....	167
5.3.	The Decision-Making Process: Democratic or Oligarchical?.....	171
5.4.	The Decision to Focus on ‘Entitlements and MSP’: Pragmatism Versus Ideology.....	181
5.4.1.	The Relationship between Rural Stagnation and Hunger.....	181
5.4.2.	Foregrounding the Welfare State Agenda.....	183
5.4.3.	Civic Contraction and Operating within a Shifting Terrain of Rights .....	186
5.4.4.	Translating Abstract Principles and Standards into Concrete Claims.....	191
5.4.5.	‘Overburdening’ the Right to Food Statute.....	195
5.4.6.	Assessing the Available Political Opportunities .....	197
5.5.	Summary.....	198
<b>Chapter 6: The Right to Food Campaign’s Strategies: ‘Uppercase’ and ‘Lowercase’ .....</b>		<b>202</b>
6.1.	Introduction .....	202
6.2.	Strategies in Hopgood’s Typology .....	205
6.3.	The Relationship between ‘Human Rights’ and ‘human rights’ .....	211
6.4.	The Right to Food Campaign’s Strategies .....	213
6.4.1.	Litigation.....	213
6.4.2.	Social mobilisation.....	217
6.4.3.	Media Advocacy .....	222
6.4.4.	Lobbying.....	223
6.4.5.	The National Advisory Council .....	224
6.4.6.	Eliciting the Support of Uppercase ‘Human Rights’.....	228
6.5.	Summary.....	232

Chapter 7: The Legalisation Process: Eschewing Institutions or Infiltrating them? .....	235
7.1. Introduction .....	235
7.2. The Passage of the Bill and Attempts to Influence it from the ‘Outside’ .....	240
7.3. Forum Swapping: the Second National Advisory Council .....	248
7.4. Explaining the Gains: ‘The Long March through the Institutions’ .....	252
7.5. Explaining the Losses .....	255
7.5.1. Financing the Right to Food Act.....	255
7.5.2. Producing Sufficient Grain for the Right to Food Act .....	265
7.5.3. The Minimum Support Price.....	268
7.6. The Impact of the Campaign’s Strategies .....	269
7.7. Summary.....	271
Conclusion .....	273
Bibliography.....	280



**List of Tables**

Table 1: Schedule of Interviews	91
Table 2: Categories of Interviewee	94
Table 3: Example of 'Theme 4' Interview Topics	98
Table 4: An Overview of the Legislative Process	240

### Abbreviations

APL	Above Poverty Line
BJP	Bharatiya Janata Party
BPL	Below Poverty Line
CESCR	Committee on Economic, Social and Cultural Rights
GVA	Gross Value Added
ICDS	Integrated Child Development Service
ICESCR	International Covenant on Economic, Social and Cultural Rights
MSP	Minimum Support Price
NAC	National Advisory Council
NFSA	National Food Security Act
NFSB	National Food Security Bill
NGO	Non-governmental Organisation
PDS	Public Distribution System
UDHR	Universal Declaration of Human Rights

## Introduction

I was motivated to conduct this study because of the persistence of widespread poverty around the world, the increasing use of human rights law to combat poverty and the fact that influential critics of human rights law are sceptical regarding human rights law's capacity in this regard. Two critiques are of particular relevance to this thesis. The first is that human rights are *minimalist*, meaning that they only provide for basic needs and do not address economic inequality (or, therefore, 'relative poverty')<sup>1</sup>. The second critique – which follows on from the first – is that in contexts characterised by economic inequality, the poor are often unable to exercise their formally-accorded rights because they lack the 'moral and material resources' needed to do so.<sup>2</sup> More problematically still, because the more advantaged – who *do* have access to moral and material resources – are able to exercise their rights, and are sometimes even able to get more out of the same (ostensibly equal) rights than the disadvantaged, this can lead to yet further social stratification.<sup>3</sup>

This thesis reviewed the above-two critiques on the basis of the extant literature and found that they were, in the main, valid. It is at least in part on this basis that numerous

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<sup>1</sup> Poverty is frequently defined in either relative or absolute terms. 'Absolute poverty', also referred to as 'extreme poverty', measures poverty in relation to the level of income necessary to meet basic needs such as food, clothing and shelter. The concept of absolute poverty is not concerned with broader quality of life issues or with the overall level of inequality in society. The conception of absolute poverty therefore fails to recognise that individuals have important social and cultural needs. These insights led to the development of the concept of 'relative poverty'. Relative poverty defines poverty in relation to the economic status of other members of a given society. People are 'relatively poor' if they fall below prevailing standards of living in a given society context. For further information please see: UNESCO glossary at: <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/poverty/> [accessed 12 Dec. 2017]. According to the World Bank, approximately 769 million people live in absolute poverty (2013 figures). Please see: <http://povertydata.worldbank.org/poverty/home/> [accessed 12 Dec. 2017].

<sup>2</sup> David Lockwood, "Civic Integration and Class Formation," *British Journal of Sociology*, Vol. 47, No. 3 (1996): 531-50.

<sup>3</sup> Lydia Morris, "Squaring the Circle: Domestic Welfare, Migrants Rights, and Human Rights," *Citizenship Studies*, Vol. 20, No. 6-7 (2016): 693-709.

scholars have rejected human rights law as a tool of social change.<sup>4</sup> However, it is argued here that this is a short-sighted approach. The construction of human rights law is a *social process* and there appears to be no inherent reason why the law could not in the future develop in a different direction, including in a manner which overcomes the problems presently associated with it. In an attempt to gain insights into the extent to which human rights law could be constructed differently, this thesis conducted an empirical study of the social processes involved in the creation of a particular piece of economic and social rights legislation, India's National Food Security Act of 2013, more commonly known as the 'right to food act'. The objective in studying the social processes involved in the creation of this statute was to generate insights into the reasons why it was created in the way that it was, with a view to offering reflections on whether it could have been constructed differently – and, in particular, in a manner which addressed economic inequality and the structural causes of economic inequality.

This Act, and the campaign surrounding its adoption, were chosen as the focus for this study because of their global significance in relation to the advancement of economic and social rights. The Global South has led the way in the use of economic and social rights, and, for instance, a number of the most high profile cases in this area have been heard before courts in India and South Africa. It was hoped that studying the processes surrounding the adoption of the right to food act would provide insights of benefit to the global human rights community.<sup>5</sup>

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<sup>4</sup> See, for example: Tony Evans, *The Politics of Human Rights : A Global Perspective* (London: Pluto Press, 2005); Radha D'Souza, "Understanding Rights," in *What's Wrong with Rights?* (s.l.: GRAIN, 2007). Available at <https://www.grain.org/es/article/entries/628-what-s-wrong-with-rights> [Accessed 4 Jan. 2018].

<sup>5</sup> Issues of positionality are discussed further in Section 3.3.2. below.

The findings of this thesis shed new light on the potential and limitations of human rights. The *content* of India's right to food act, passed in 2013 after a four-year campaign, lends weight to the critique that human rights are *minimalist*. While the Act can, on the one hand, be considered a human rights success story – it extends life-saving entitlements of food, cash transfers and basic healthcare services to impoverished communities – it fails to address socioeconomic inequalities or the structural causes of socioeconomic inequalities. However, an analysis of the *social processes* involved in the creation of the right to food act leads to a more optimistic assessment of the potential and limitations of human rights. This analysis demonstrates that the form that India's right to food act took was far from preordained. It was shaped by a diversity of ideas and processes of contestation among Indian civil society,<sup>6</sup> and between civil society and the state. Moreover, this thesis argues, it is entirely conceivable that had certain circumstances been different, the right to food act could have been formulated in manner which addressed at least some of the structural causes of socioeconomic inequalities in India.

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<sup>6</sup> Following Cohen and Arato, the term 'civil society' is understood for the purposes of this thesis as the sphere of interaction between the economy and the state. This includes: the intimate sphere (i.e. the family), the sphere of associations (i.e. voluntary associations, NGOs, charities etc.) and social movements. Political parties are not included in this definition of civil society. Please see: Jean L. Cohen and Andrew Arato, *Civil Society and Political Theory* (Cambridge: MIT, 1994). IX.

## Chapter 1: Literature Review

Chapter 1 explains how human rights and anti-poverty work became intertwined in the 1980s and 1990s, before turning briefly to the question of ‘what human rights are’ and how they are understood for the purpose of this study. The principal focus of this chapter addresses the two critiques of human rights referred to above, arguing that although elements of these critiques can be questioned, they are on the whole difficult to contest. Chapter 1 proceeds to explain that the first critique – that is, that human rights law fails to address socioeconomic inequalities or the structural causes of socioeconomic inequalities – is based primarily on an analysis of existing human rights law.<sup>7</sup> Drawing on the literature on the social construction of human rights, the nature of pre- and non-legalised conceptions of human rights, and the *institutionalisation* or *legalisation*<sup>8</sup> of human rights, Chapter 1 then argues that there is no inherent reason why human rights law could not, in the future, be constructed in ways that enable it to tackle socioeconomic inequalities or their structural causes. Finally, Chapter 1 makes the case that by studying the social processes involved in the creation of human rights law, new insights into the potential and limitations of human rights can be generated.

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<sup>7</sup> However, elements of the critiques are based on philosophical argument. For example, please see: Fiona Robinson, "The Limits of a Rights-Based Approach to International Ethics," in *Human Rights Fifty Years On: A Reappraisal*, ed. Tony Evans (Manchester: Manchester University Press, 1998).

<sup>8</sup> Many scholars use the terms ‘institutionalisation’ and ‘legalisation’ interchangeably although the term ‘institutionalisation’ clearly encompasses phenomena that the notion of ‘legalisation’ does not. For example, human rights principles could be institutionalised within an organisation although this would not, necessarily, engage the law. This study is centred on the social processes involved in the *legalisation* of human rights and not the broader phenomenon of institutionalisation. The term ‘legalisation’ is defined in Chapter 1, Section 1.5.2.

## Chapter 2: Background and Context to the Campaign for the Right to Food Act

Chapter 2 introduces this thesis' case study: the campaign for a 'right to food act' in India and provides the necessary background and context. It first presents an overview of the socioeconomic setting, which includes a brief review of the primary causes of poverty and hunger in India. The chapter then turns to the political and legal context, describing the development of India's human rights regime and, in particular, the evolution of the right to food from the 1980s onwards. The genesis of the Right to Food Campaign – which lies in a Public Interest Litigation<sup>9</sup> case filed by a group of human rights and social justice activists in 2001 – is then explained and a description of the Right to Food Campaign is provided. Finally, the reasons why the Right to Food Campaign decided to launch a campaign for a right to food act in 2009 are discussed.

## Chapter 3: The Methodology

Chapter 3 elaborates on the motivation for this thesis before turning to a discussion of the Research Design. The Research Design addresses the following issues: the research questions and the way in which the research questions evolved as the research developed; the reasons why the campaign for India's right to food act was selected as the thesis' case study; issues related to positionality; the data collection methods employed, which included reviewing several hundred documents and conducting 37 interviews with key informants; access issues; and the data analysis techniques that

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<sup>9</sup> Public Interest Litigation (PIL) is a mechanism that enables third parties to file petitions against the state that are based on constitutional claims on behalf of disadvantaged individuals and groups. The doctrine of PIL loosens traditional 'standing requirements' which require litigants to have suffered a legal injury in order to maintain an action for judicial redress. The objective of PIL is to enhance access to justice for disadvantaged groups. PIL came about as a result of a series of Supreme Court judgments in the late 1970s and 1980s. Avani Mehta Sood, "Gender Justice through Public Interest Litigation: Case Studies from India," *Vanderbilt Journal of Transnational Law* Vol. 41, No. 3 (2008): 705-989.

were employed. Ethical issues are then addressed including, importantly, informed consent and confidentiality/anonymity.

#### Chapter 4: Conceptualising the Right to Food in India

This chapter examines the two main conceptions of the right to food that emerged among Indian civil society in the early days of the campaign for the right to food act. It demonstrates that the right to food as an *idea* is capable of accommodating far-reaching demands for structural change, including demands that relate to access to and control over productive resources such as forests, land, seeds and water, and radical changes to international trade rules. This analysis demonstrates that as a pre-legalised *idea* or *conception*, the right to food is capable of addressing at least some structural causes of inequalities between and within states. However, drawing on Hopgood's 'uppercase-lowercase' typology of *approaches* to human rights, the chapter proceeds to argue that some actors – those engaged in uppercase 'Human Rights' (i.e. a formal, legal approach to rights) – are likely to resist the formulation of radical conceptions of rights if these depart too dramatically from extant human rights law for fear that this will undermine the law's integrity. Finally, Chapter 4 argues that the creation of rights exclusions,<sup>10</sup> which has been linked to the *legalisation stage* of the human rights law-making process,<sup>11</sup> can in fact also be linked to what could be thought of as the *conceptualisation stage*; that is, the stage during which social actors construct their understandings of what a human right means (or should mean). This is because, in spite of the professed universality of human rights, struggles for new rights tend to be carried out by particular groups in pursuit of particular interests.<sup>12</sup> As a result, the creation of

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<sup>10</sup> Lockwood, *Civic Integration and Class Formation*.

<sup>11</sup> Neil Stammers, *Human Rights and Social Movements* (London: Pluto Press, 2009).

<sup>12</sup> Lydia Morris, "Sociology and Rights - an Emergent Field," in *Rights - Sociological Perspectives* ed. Lydia Morris (London: Routledge, 2006).



‘new’ human rights (or the elaboration of existing ones) can produce new inequalities. This presents a major challenge for human rights.

### Chapter 5: From Conceptions of Human Rights to Concrete Claims

The weakening or ‘dilution’ of pre- or non-legalised conceptions of human rights is usually associated with the *legalisation stage* of the human rights-law creation process. This is because formal institutions – including law-making institutions such as courts and legislatures – have a tendency to reflect and reproduce prevailing relations of power.<sup>13</sup> The fact that human rights law is created by ‘power reproducing’ institutions is one reason why some scholars believe that human rights law is, and will in the future remain, conservative.<sup>14</sup> Chapter 5 demonstrates that pre- or non-legalised conceptions of human rights can also be ‘diluted’ during the *claim-formulation stage* of the human rights-law creation process; that is, the stage during which rights activists translate their conceptions of rights into concrete claims that can be made of the state. Chapter 5 argues that, in spite of the existence of formally-democratic consultation processes within the campaign, the more radical conceptions of the right to food were filtered out before the *legalisation stage* because influential campaign members vehemently opposed their inclusion in the campaign’s claims. Michels’ theory of an ‘iron law of oligarchy’ was a useful tool with which to make sense of how decision-making within the campaign took place.<sup>15</sup> Interestingly, the opposition to including the more radical claims came down, in the main, to practical and pragmatic rather than ideological concerns.

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<sup>13</sup> Stammers; Marius Pieterse, "Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited," *Human Rights Quarterly*, Vol. 29, No. 3 (2007): 796-822; Anthony Woodiwiss, *Human Rights* (London: Routledge, 2005).

<sup>14</sup> Evans, *The Politics of Human Rights : A Global Perspective*.

<sup>15</sup> Robert Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy (1915)* (New Brunswick, New Jersey: Routledge, 1999).

### Chapter 6: The Right to Food Campaign's Strategies: 'Uppercase' and 'Lowercase'

Chapters 6 and 7 turn to the *legalisation stage* of the human rights law-creation process. Chapter 6 examines the strategies employed by the Right to Food Campaign as it attempted to secure the inclusion of its claims in the right to food act. The Chapter returns to Hopgood's 'uppercase-lowercase' typology in this chapter and makes the argument that, in contradiction to Hopgood's typology, the Right to Food Campaign used both 'insider' and 'outsider' strategies to achieve its goals. These strategies included organising rallies and demonstrations, lobbying parliamentarians and securing media coverage. In addition, two members of the Right to Food Campaign's leadership were offered and assumed positions on an ad hoc legislative drafting body called the 'National Advisory Council'.<sup>16</sup> Chapter 6 concludes by noting that while Hopgood's typology is a useful analytical tool with which to distinguish different approaches to human rights, the element of Hopgood's framework that pertains to the strategies used by rights actors needs to be reconsidered.

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<sup>16</sup> The National Advisory Council was an ad hoc legislative drafting body established in 2010 by Congress Party President Sonia Gandhi, a powerful political insider, ostensibly to enable her to have a say in government policy and vie for power with Prime Minister Manmohan Singh (The Indian National Congress Party has separate positions for the Party President and the Prime Minister).

### Chapter 7: The Legalisation Process – Eschewing Institutions or Infiltrating them?

Chapter 7 analyses the *legalisation stage* of the human rights-law creation process, from the government's announcement of its intention to enact a right to food law in June 2009 to the passing of the Act in August 2013. The legalisation process is often considered to be the greatest challenge in respect of the creation of human rights law which contests the status quo.<sup>17</sup> On the one hand, the findings presented in Chapter 7 support the thesis that the creation of radical or transformative human rights law is undermined by the legalisation process: when the draft right to food act was in the hands of institutions that were hostile to the goals of the campaign, the campaign was unable to influence its content, in spite of the fact that it organised rallies and demonstrations, lobbied MPs and conducted extensive media advocacy. However, in the end, the Right to Food Campaign was able to secure the inclusion of most of its claims in the right to food act by obtaining the backing of a powerful political insider. This finding brings to mind the call of 1970s-era German leftists for 'student radicals to undertake the long march through the institutions and change the political process from within' thereby 'altering the composition of political elites [...]' within those institutions.<sup>18</sup>

Finally, Chapter 7 analyses the reasons why the campaign was unable to secure all of its goals in spite of the fact that it had the support of a powerful political insider. The chapter argues that the following reasons were of particular importance: 1) The inability of the campaign to allay concerns about the costs associated with some of its

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<sup>17</sup> Stammers, *Human Rights and Social Movements*; Pieterse, "Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited."

<sup>18</sup> Russell J. Dalton, "Generational Change in Elite Political Beliefs: The Growth of Ideological Polarization," *The Journal of Politics*, Vol. 49, No. 4 (1987): 976-97. 144.

proposals (otherwise put, because it separated the 'social' from the 'economic'; 2) Concerns that India's farmers would be unable to produce enough food grain to meet the requirements of the campaign's proposals as well as the needs of the open market; and 3) The fact that the two campaign members who were offered positions on the National Advisory Council lacked a commitment to securing one of the campaign's main claims and, therefore, they did not use their privileged 'insider' position to fight for it.

## Chapter 1: Literature Review

### 1.1. Introduction

We live in an age of unprecedented economic prosperity. And yet, the lives of billions of people remain blighted by the effects of poverty. The consequences of ‘absolute poverty’ – in which approximately 800 million people live today – are especially pernicious: denied access to basic human needs such as food, water, safe sanitation and adequate healthcare, the ‘absolute poor’ die in their millions each year from easily preventable causes.<sup>19</sup> Many more millions still exist in a state of ‘relative poverty’;<sup>20</sup> that is, their rudimentary needs have been met, but their ability to meaningfully participate in society is severely impeded as a result of the fact that they have fewer resources and opportunities than other people living in the same society. Relative poverty is, therefore, intrinsically related to the level of inequality present in a given society.

Over the past few centuries, efforts to eradicate poverty, whether absolute or relative, have come in many different forms, from engagement in political parties and social movement activism to trade unionism and international development.<sup>21</sup> It is only relatively recently that human rights language and human rights law have started to be deployed to tackle poverty.<sup>22</sup> After decades of ‘passing each other like ships in the

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<sup>19</sup> An estimated 18 million people die each year due to poverty-related causes that are preventable through straightforward actions such as improving nutrition, ensuring access to safe drinking water and providing vaccines. Thomas Pogge, *Politics as Usual: What Lies Behind the Pro-Poor Rhetoric* (Cambridge: Polity, 2010).

<sup>20</sup> Please see note 1.

<sup>21</sup> International development is focused solely on addressing poverty in developing countries.

<sup>22</sup> As numerous scholars have noted, in the nineteenth century human rights language was used to challenge poverty and socioeconomic inequalities, developments which shaped the content of post-WWII manifestations of human rights. See, for example, Micheline Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era* (California: University of California Press, 2008); Stammers, *Human Rights and Social Movements*.

night’, human rights and international development became intertwined in the 1990s through the creation of the ‘human rights-based approach’ to development.<sup>23</sup>

There is no single definition of a ‘human rights-based approach’ to development but for many social actors it means that a) development interventions should further the realisation of human rights as laid down in international human rights instruments and b) human rights principles should guide development processes. In light of the emergence of the ‘human rights-based approach’, in recent years human rights have been incorporated into the funding strategies, policy formulations and practices of a diverse range of actors including UN agencies, major donors, international NGOs, domestic NGOs and social movements.<sup>24</sup> Equally, from the late 1980s onwards, international human rights law actors such as the United Nations special rapporteurs<sup>25</sup> on the right to health, the right to food and the right to education, and the United Nations Committee on Economic, Social and Cultural Rights,<sup>26</sup> started to challenge anti-poor

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<sup>23</sup> While the human rights-based approach to developments means different things to different actors, most agencies of the UN understand it to comprise two core elements: a commitment to setting the realisation of internationally recognised human rights as a key end goal of development; and a commitment to ensuring that human rights principles guide the process of development. Please see the “UN Common Understanding” which lays out the approach of most agencies of the UN to the rights-based approach to development at:

<http://hrbportal.org/the-human-rights-based-approach-to-development-cooperation-towards-a-common-understanding-among-un-agencies> [accessed 12 Dec. 2017]; and Peter Uvin, *Human Rights and Development* (Bloomfield, CT: Kumarian Press, 2004). For the quotation please see: Philip Alston, "Ships Passing in the Night: The Current State of the Human Rights and Development Debate Seen through the Lens of the Millennium Development Goals," *Human Rights Quarterly*, Vol. 27, No. 3 (2005): 755-829.

<sup>24</sup> Paul Gready, "Introduction," in *Reinventing Development? Translating Rights-Based Approaches from Theory into Practice* ed. Paul Gready and Jonathan Ensor (London: Zed Books, 2005). 1.

<sup>25</sup> United Nations special rapporteurs are appointed by the UN Human Rights Council to examine specific human rights issues. For further information please see: <http://www.un.org/apps/news/html/SpecialRapporteurs.asp> [accessed 19 Mar. 2018].

<sup>26</sup> The Committee on Economic, Social and Cultural Rights (CESCR) is a body composed of 18 independent experts that monitors the implementation of the International Covenant on Economic, Social and Cultural Rights. For further information please see: <http://www.ohchr.org/en/hrbodies/cescr/pages/cescrindex.aspx> [accessed 19 Mar. 2018].

policies.<sup>27</sup> Increasingly, social movements are also using human rights language and human rights law in their struggles against impoverishment and oppression.<sup>28</sup>

The coming together of human rights and anti-poverty work has, no doubt, been lauded by many observers.<sup>29</sup> However, numerous other commentators argue that human rights in general (i.e. human rights language and discourse) and human rights law in particular are not useful tools with which to tackle poverty.

The utility of human rights law to the poor was certainly questionable in the 19<sup>th</sup> century when it was, in the main, limited to civil and political liberties.<sup>30</sup> However, social movement praxis in the 19<sup>th</sup> and 20<sup>th</sup> centuries in the industrialising North and the colonised South broadened the scope of human rights, among other things, ‘in terms of the development of economic and social rights’ such as the right to food, the right to education, the right to health and the right to housing.<sup>31</sup> These rights provide for basic human needs and ‘militate against property-oriented expressions of human rights found in both classical and neoliberal thought’.<sup>32</sup> And yet, in spite of the emergence of economic and social rights, a review of the relevant literature throws up reasons to be cautious about using human rights, and especially human rights *law*, to combat poverty.

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<sup>27</sup> Asbjørn Eide and Wenche Barth Eide, eds., *Food as a Human Right* (Tokyo: United Nations University Press, 1984); Giovanni Andrea Cornia, Richard Jolly, and Frances Stewart, eds., *Adjustment with a Human Face: Volume II, Ten Country Case Studies* (Oxford: Clarendon Press, 1988).

<sup>28</sup> Boaventura De Sousa Santos and Cesar A. Rodriguez-Garavito, eds., *Law and Globalization from Below - Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005); Kate Nash, "Is it Social Movements that Construct Human Rights?," in *The Oxford Handbook of Social Movements*, ed. Donatella Della Porta and Mario Diani (Oxford: Oxford University Press, 2015).

<sup>29</sup> For example, see: Alston, *Ships Passing in the Night*.

<sup>30</sup> Karl Marx, "On the Jewish Question (1844)," in *The Marx-Engels Reader*, ed. Robert Tucker (New York: Norton & Company, 1978); Ted Benton, "Do We Need Rights? If So, What Sort?," in *Rights - Sociological Perspectives* ed. Lydia Morris (London: Routledge, 2006).

<sup>31</sup> Stammers, *Human Rights and Social Movements*. 76.

<sup>32</sup> Joe Wills, *Contesting World Order?: Socioeconomic Rights and Global Justice Movements* (Cambridge: Cambridge University Press, 2017). 85.

Many of these reasons are centred on arguments pertaining to the (in)adequacy of the *content* of human rights law; and this particular critique will be a central focus of this study.<sup>33</sup> This chapter concurs with those who contend that the content of human rights law is inadequate in a number of ways but argues that there are indications that human rights law could in the future develop in ways which overcome the limitations presently associated with it. In light of this it would be judicious, as Stammers has maintained, to study the social processes involved in the creation of human rights law in order to gain a better understanding of the reasons why it is constructed in the way that it is.

The remainder of this chapter is laid out as follows. Section 1.2 briefly addresses the question of ‘what human rights are’ and, in particular, how human rights are understood for the purpose of this study. In Section 1.3 some of the main criticisms of economic and social rights that pertain to their (in)ability to combat absolute and relative poverty are laid out. These critiques are then appraised in Section 1.4, which argues that, on the face of it, the critiques are valid. Section 1.5 discusses the existence of indications that human rights law could in the future develop in ways which overcome the limitations presently associated with it and argues that in order to gain a better understanding of why human rights law is constructed in the way that it is, there is a need to study the social processes involved in its creation.

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<sup>33</sup> Other critiques include the following: that human rights are demobilising; that human rights prevent activists from pursuing ‘more effective’ modes of action; and that human rights direct power towards technical experts, especially lawyers.



## 1.2. What are Human Rights?

As Dembour has remarked, 'we do not all conceive of human rights in the same way'.<sup>34</sup> It is necessary at this stage, therefore, to explain how human rights/human rights law are understood for the purpose of this thesis. This thesis takes a sociological approach to human rights. It views them as 'neither self-generating nor self-enforcing'<sup>35</sup> but rather as 'historically created and (trans)nationally redefined by various actors involved in specific social, political and legal processes'.<sup>36</sup> In other words, human rights are understood for the purposes of this study as a social construction.

Social constructionism attributes a central role to domestic and international legal systems in generating understandings of human rights, but it also ascribes importance to the non-state and non-institutionalised forms that human rights articulations take.<sup>37</sup> Social constructionism, moreover, recognises that the process of shaping the meaning of human rights involves a diversity of social actors which do not only press for the legalisation or enforcement of human rights norms, but actively engage in generating understandings and altering perceptions about what human rights norms – whether legalised or non-legalised – consist of through framing and other discursive strategies.<sup>38</sup>

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<sup>34</sup> Marie-Bénédicte Dembour, "What Are Human Rights? Four Schools of Thought," *Human Rights Quarterly*, Vol. 32, No. 1 (2010): 1-20. Abstract.

<sup>35</sup> Woodiwiss, *Human Rights*. 3.

<sup>36</sup> Eunna Lee-Gong, "Contestations over Rights: From Establishment to Implementation of the National Basic Livelihood Security System in South Korea," in *Sociology and Human Rights - New Engagements* ed. Patricia Hynes, et al. (London: Routledge, 2011). 70.

<sup>37</sup> Stammers, *Human Rights and Social Movements*.

<sup>38</sup> Seyla Benhabib, *Dignity in Adversity: Human Rights in Troubled Times* (Cambridge: Polity Press, 2011).

It has been emphasised that as concepts human rights are ‘relative, indeterminate, abstract and unstable’.<sup>39</sup> As a result, human rights tend to be infused by other bodies of thought. These include social and ethical philosophies such as Confucianism and Gandhism<sup>40</sup> and ‘political ideologies understood as “world-views” or *weltanshuung*’.<sup>41</sup> The most influential political ideologies – at least in the Global North – have arguably been liberalism/neoliberalism, social democracy/social liberalism and Marxism. Liberals and neoliberals believe in the importance of a small but strong state. They view state power as necessary, but also as an ever-present danger. Liberals and neoliberals therefore focus almost exclusively on ‘negative’<sup>42</sup> rights i.e. rights which are intended to protect individuals from state power. Social democracy ‘work[s] from a very different set of assumptions’.<sup>43</sup> It ‘remains committed to the capitalist market as a site of innovation, growth and allocation’ but ‘recognises the potential for markets to produce inequalities which can have serious adverse social consequences’ and therefore ‘emphasizes some form of management of markets to ameliorate inequalities’ including via the creation of welfare rights.<sup>44</sup> Social democrats therefore tend to ‘embrace[...] notions of positive as well as negative liberties and rights [...]’.<sup>45</sup> Reductionist Marxism, which, it must be noted, is rejected by other important currents in Marxism, ‘assumes both a historical teleology and a form of economic determinism which leads to seeing systems of ideas [including human rights] as superstructural

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<sup>39</sup> Pieterse, "Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited." 800.

<sup>40</sup> For the influence of Confucianism on understandings of human rights, please see Lee-Gong. The influence of Gandhism on understandings of human rights came out in several interviews conducted for this thesis including the interviews with Shoma (pseudonym) on 14 August 2014 India; Poonam (pseudonym) on 1 August 2014, India.

<sup>41</sup> Stammers, *Human Rights and Social Movements*. 14.

<sup>42</sup> It is noted that the ‘negative’ versus ‘positive’ liberties has been superseded by the ‘respect, protect and fulfil’ framework, at least as these categories are understood by international human rights law actors. However, numerous observers continue to employ the ‘negative’ versus ‘positive’ characterisation of human rights.

<sup>43</sup> Stammers, *Human Rights and Social Movements*. 14.

<sup>44</sup> *Ibid.* 14.

<sup>45</sup> *Ibid.* 15.

epiphenomena' which are produced by and simply reflect 'the deeper economic and historical logic of the particular mode of production within which it is situated'.<sup>46</sup>

In practice, the distinction between 'human' rights and other types of rights such as 'citizenship' or 'welfare' rights is difficult to draw. For instance, while human rights, unlike citizenship rights, are in theory universal, domestic human rights regimes restrict the application of most of the rights they provide for to those present within a given jurisdiction, and sometimes to sub-categories of that population. Equally, citizenship rights are often not actually restricted to citizens, but are, rather, accorded to all those with (certain types of) residency status.<sup>47</sup> In light of these complexities, this thesis will take a contextual view of the distinction between different types of rights. For clarity, the term 'economic and social rights' will be used to refer to economic and social rights that have been provided for by domestic or international law such as the UK Human Rights Act or the International Covenant on Economic, Social and Cultural Rights. Economic and social rights that do not have the status of being a human right will be referred to as welfare rights.

### **1.3. The Capacity of Economic and Social Rights to Tackle Poverty**

This section of Chapter 1 lays out some of the main arguments that have been put forward in support of the contention that economic and social rights are an inadequate tool with which to tackle poverty. The section is divided into two parts. The first part discusses the claim that economic and social rights cannot contribute to efforts to

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<sup>46</sup> Ibid. 16.

<sup>47</sup> Lydia Morris, "Citizenship and Human Rights: Ideals and Actualities," *The British Journal of Sociology*, Vol. 63, No. 1 (2012): 39-46.

eradicate *relative poverty* as they do not provide for economic equality nor do they tackle the structural causes of economic inequality. The second part of the section examines the thesis that economic and social rights cannot even combat *absolute poverty* (i.e. by ensuring access to basic needs) because the poor are often unable to exercise economic and social rights due to the presence of various ‘deficits’.

### 1.3.1. Economic Inequality and its Structural Causes

This section of Chapter 1 provides an overview of the contention that economic and social rights cannot meaningfully contribute to efforts to eradicate *relative poverty* as they do not provide for economic equality or adequately address the structural causes of economic inequality. Those who have engaged in this debate have framed it in different ways: some scholars link it to earlier debates on the limitations of social democracy as they view social systems that provide for economic and social rights as more or less tantamount to social democratic systems, while other observers analyse the position of human rights law on economic equality and the structural causes of economic inequality.

It was hoped that the expansion of welfare rights to include labour, social security, health, housing and food rights in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries – a development which manifested in most industrialised countries in the establishment of some form of social democracy<sup>48</sup> – would lead to at least a modicum of economic equality (and, therefore, a reduction in relative poverty).<sup>49</sup> Inequalities of various kinds persisted,

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<sup>48</sup> As noted in Section 1.2 above, social democracy is committed to the capitalist market as a site of innovation and growth but recognises the potential for markets to produce inequalities which can create harmful social consequences and therefore seeks to regulate markets while ameliorating inequalities, including through the creation of welfare/citizenship rights. Stammers, *Human Rights and Social Movements*.

<sup>49</sup> T.H. Marshall, *Citizenship and Social Class* (Cambridge: Cambridge University Press, 1950).

however, and the ability of social democratic systems to eradicate them was increasingly questioned.<sup>50</sup> In recent years, some of the critiques of social democracy have been extended to economic and social ‘human’ rights<sup>51</sup> on the basis that, it is argued, a social system in which economic and social rights are provided for is tantamount to a social democratic social system.

Numerous scholars associate economic and social rights with social democracy. Ife, for example, contends that economic and social rights ‘in their current form, have their intellectual origins [...] in 19<sup>th</sup>- and 20<sup>th</sup>-century social democracy or socialism, with their tradition that the collective, in the form of the state, should provide for the needs of the individual, at least at a minimal level’.<sup>52</sup> Benton also links economic and social rights to social democracy, but goes further than Ife to extend some of the critiques of the latter to the former. Benton defines social democracy (which he refers to as ‘welfare capitalism’) as ‘an institutional framework within which continuing tensions between class-divided wealth creation and compensatory citizenship rights could be contained’.<sup>53</sup> He then argues that economic and social rights have the same limitations as social democratic systems. Benton’s contention about economic and social rights appears to rest on his reading of the text of the Universal Declaration of Human Rights, the cornerstone of international human rights law. He first asserts that: ‘the [...] UN Declaration of Human Rights [sic] works within a closely similar frame’ to ‘liberal democratic welfare capitalism’, and subsequently elaborates that:

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<sup>50</sup> Sylvia Walby, "Is Citizenship Gendered?," *Sociology*, Vol. 28, No. 2 (1994): 379-95; Benton; Ralph Miliband and Marcel Liebman, "Beyond Social Democracy," *Socialist Register*, Vol. 22 (1985/86): 476-89.

<sup>51</sup> As noted above, the term ‘economic and social rights’ is used to refer to economic and social ‘human’ rights in this thesis.

<sup>52</sup> Jim Ife, *Human Rights from Below: Achieving Rights through Community Development* (Cambridge: Cambridge University Press, 2010). 45.

<sup>53</sup> Benton, "Do We Need Rights? If So, What Sort?." 32.

Significantly, [...] the institutional order of liberal democratic capitalism is clearly discernible [in the Universal Declaration of Human Rights] despite the normative universalism of the text: the health and well-being of ‘himself and his family’, the assertion of trade union rights, paid holidays, equal pay, limitation of working hours and so on. Wage labour, the nuclear family and gender division of labour, it seems, will not be challenged, but they will be regulated and the disadvantages attaching to them ameliorated or compensated by the public power.<sup>54</sup>

For Benton, this means that the radical (Marxist) critique of human rights developed in the context of the emergence of civil and political rights continues to have purchase as in spite of the advance of social democracy, ‘the basic structural inequalities and relations of power and property that characterised earlier phases of capitalist development remain in place’.<sup>55</sup>

Woodiwiss puts forward a similar argument. In his attempt to rescue economic and social rights from their association with communism he argues that:

It is surely time that the taint of ‘Stalinism’ was finally removed from the concept of economic and social rights. Such rights are far more obviously derived from the broad, Western European traditions of Christian and Social Democracy than from the ideology of the Stalinist, or even post-Stalinist, Soviet Union [...].<sup>56</sup>

Subsequently in a later work he argues that:

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<sup>54</sup> Ibid. 32.

<sup>55</sup> Ibid. 33.

<sup>56</sup> Anthony Woodiwiss, *Making Human Rights Work Globally* (London: The Glasshouse Press, 2003). 7.

even the small number of economic and social rights included in the UDHR<sup>57</sup> – social security, work, protection against unemployment, non-discrimination in employment, just and favourable remuneration, trade union membership, rest and leisure, and education – are intended only to limit or ameliorate the effects of economic and social inequality rather than do anything about these forms of inequality as such.<sup>58</sup>

Other scholars base their contention that economic and social rights fail to provide for economic equality – or, therefore, the eradication of relative poverty – on legal analysis. Questions of the distribution and redistribution of wealth have, according to Edelman and James, ‘been among the most contentious issues in international human rights law’,<sup>59</sup> even though the unequal distribution of income and wealth is strongly linked to the persistence of poverty.<sup>60</sup> As Moyn has noted, if effectively delivered, economic and social rights will require *some* degree of income redistribution.<sup>61</sup> However, ‘[i]nternational human rights law does not demand that there be no inequality’ and ‘[i]t is not a breach of human rights for there to be rich people and poor people in a society’.<sup>62</sup> Baxi compares this characteristic of human rights law unfavourably with Rawls’ ‘Difference Principle’ which ‘permits inequalities in income only if they work [...] to make those who are worst off as well off as possible’.<sup>63</sup> Baxi stresses that ‘this

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<sup>57</sup> The Universal Declaration of Human Rights.

<sup>58</sup> Woodiwiss, *Human Rights*. 6-7.

<sup>59</sup> Marc Edelman and Carwil James, "Peasants' Rights and the UN System: Quixotic Struggle? Or Emancipatory Idea Whose Time Has Come?," *The Journal of Peasant Studies*, Vol. 38, No. 1 (2011): 81-108. 99.

<sup>60</sup> Margot E. Salomon, "Why Should it Matter that Others have More? Poverty, Inequality, and the Potential of International Human Rights Law," *Review of International Studies*, Vol. 37, No. 5 (2011): 2137-55.

<sup>61</sup> Samuel Moyn, "A Powerless Companion: Human Rights in the Age of Neoliberalism," *Law and Contemporary Problems*, Vol. 77, No. 4 (2014): 147-70.

<sup>62</sup> Sarah Joseph, *Blame it on the WTO: A Human Rights Critique* (Oxford: Oxford University Press, 2011). 168.

<sup>63</sup> Norman Daniels, "Justice, Health, and Healthcare," *American Journal of Bioethics*, Vol. 1, No. 2 (2001): 2-16 cited in Upendra Baxi, "The Place of the Human Right to Health and Contemporary Approaches to Global Justice: Some Impertinent Interrogations," in *Global Health and Human Rights : Legal and Philosophical Perspectives*, ed. John Harrington and Maria Stuttaford (London: Routledge, 2010). 18.

principle is not a simple trickle down principle that tolerates any inequality so long as there is some benefit that flows down the economic ladder; it requires a maximal flow downward' and would therefore 'flatten socioeconomic inequalities in a robust way, assuring far more than a "decent minimum" [...].'<sup>64</sup>

The failure of human rights in general – whether civil and political or economic and social – to address the structural causes of oppression and injustice has been argued by numerous observers. For example, Kennedy contends that human rights challenges, particularly in the form of litigation, generally revolve around relatively narrow issues which leave the underlying political, social, cultural and economic structural causes of rights violations unaddressed.<sup>65</sup> Equally, Yamin has remarked that human rights analysis foregrounds the identification of a violator, violation and remedy which leaves little room for an analysis of the structural causes of violations.<sup>66</sup> Chapman concurs with Kennedy and Yamin's analysis. She argues that 'the human rights community has often been negligent in raising problematic structural issues [...].'<sup>67</sup>

Other scholars question whether economic and social rights adequately address the structural causes of economic inequality especially – depending on the ideological orientation of the author – the capitalist or neoliberal economic system. D'Souza, for

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<sup>64</sup> Baxi, "The Place of the Human Right to Health and Contemporary Approaches to Global Justice : Some Impertinent Interrogations". 13.

<sup>65</sup> David Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism* (Princeton: Princeton University Press, 2004).

<sup>66</sup> Alicia Ely Yamin, "The Future in the Mirror: Incorporating Strategies for the Defense and Promotion of Economic, Social and Cultural Rights into the Mainstream Human Rights Agenda," *Human Rights Quarterly*, Vol. 27, No. 4 (2005): 1200-44.

<sup>67</sup> Audrey R. Chapman, *Global Health, Human Rights, and the Challenge of Neoliberal Policies* (Cambridge: Cambridge University Press, 2016). 255.



example, has criticised human rights for failing to challenge the capitalist mode of production, arguing that:

any talk of ‘rights’ in politics must be backed by an economic system that facilitates [rights], and capitalist individualism, commodity production and the market economy do not create the conditions for freedom from want and other freedoms; to the contrary they create bondage and oppression.<sup>68</sup>

O’Connell focuses on neoliberal capitalism rather than capitalism per se. He contends that over the past few years ‘apex courts in Canada, India, and South Africa – which have traditionally been viewed as socio-economic rights friendly – have issued judgments fundamentally at variance with the meaningful protection of socio-economic rights’.<sup>69</sup> He suggests that this development ‘can be understood as part of a de facto harmonisation of constitutional rights protection in the era of neo-liberal globalisation’ with national courts beginning to ‘articulate analogous conceptions of fundamental rights which are atomistic, “market friendly” and, more broadly, congruent with the narrow liberal conception of rights, and consequently antithetical to the protection of socioeconomic rights’.<sup>70</sup> Will’s assessment of the capacity of economic and social rights to contest the neoliberal economic model is slightly less pessimistic, albeit still critical. Wills suggests that UN human rights bodies have taken a ‘cautious stance’ in relation to ‘the negative impact of [neoliberal] globalisation on socioeconomic rights’<sup>71</sup> and observes that:

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<sup>68</sup> D’Souza, Radha. "Understanding Rights." In *What's Wrong with Rights?* s.l.: GRAIN, 2007. 3. Available at <https://www.grain.org/article/entries/637-radha-d-souza> [accessed 1 Sept. 2018].

<sup>69</sup> Paul O’Connell, "The Death of Socio-Economic Rights," *The Modern Law Review*, Vol. 74, No. 4 (2011): 532-54. Abstract.

<sup>70</sup> Ibid. Abstract.

<sup>71</sup> Wills, *Contesting World Order?: Socioeconomic Rights and Global Justice Movements*. 50.

In contrast to the demands for an alternative development paradigm to neo-liberal globalisation, the CESCR have adopted what might be termed a compensatory approach which is concerned with correcting or mitigating the perceived malfunctions of the existing international system.<sup>72</sup>

This is perhaps unsurprising in light of the fact that international human rights law actors have, for reasons that go back Cold War-era conflict, been at pains to stress that:

the ICESCR does not endorse or oppose any form of government or economic system [...]; in terms of political and economic systems the Covenant is neutral and its principles cannot accurately be described as being predicated exclusively on the need for, or the desirability of a socialist or a capitalist system, or a mixed, centrally planned, or *laissez-fair* economy or any other particular approach.<sup>73</sup>

At the same time, Wills suggests that ‘behind the façade of political neutrality, it is arguable that the CESCR’s approach does prescribe a particular type of politics that emphasises the state’s proactive and protective role in ensuring the material wellbeing of its citizens’ in ways that ‘challenge the neo-liberal calls for withdrawal of the state from economic activity’.<sup>74</sup>

### 1.3.2. Exercising Economic and Social Rights in Unequal Contexts

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<sup>72</sup> Ibid. 75.

<sup>73</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 3: The Nature of States Parties' Obligations (Art. 2, Para. 1, of the Covenant)*, 14 December 1990, E/1991/23, available at: <http://www.refworld.org/docid/4538838e10.html> [accessed 20 Mar. 2018]

<sup>74</sup> Wills, *Contesting World Order?: Socioeconomic Rights and Global Justice Movements*. 78.

This section of Chapter 2 turns to the second reason why many observers argue that economic and social rights are an inadequate tool with which to tackle *absolute poverty*; that is, the inability of the poor to exercise their rights effectively due to the presence of various ‘deficits’ in contexts characterised by socioeconomic inequality.<sup>75</sup> This observation has long roots. As early as 1844, in his critique of rights in *On the Jewish Question*, Marx observed that ‘real relations’ between people are determined by their relative endowments of wealth and power and not the presence or absence of formal juridical rights.<sup>76</sup> Numerous scholars have built upon Marx’s insights. Baxi, for example, has observed that social equality is key to ensuring the implementation of rights such as ‘effective rights of political participation’.<sup>77</sup> Naughton, equally, has argued that socioeconomic inequality impedes the implementation of the right to non-discrimination.<sup>78</sup> Building upon the work of Lockwood,<sup>79</sup> Morris’ insights about the functioning of rights in contexts characterised by socioeconomic inequality are even more troubling. Morris has demonstrated that because the advantaged, unlike the least well off *are* usually able to exercise their rights and can sometimes even gain *more* from the same rights than the less advantaged, rights can actually serve as a tool of further social stratification.<sup>80</sup>

Lockwood’s ‘civic stratification framework’ as amended by Morris is a useful analytical tool with which to analyse how rights function in unequal socioeconomic

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<sup>75</sup> Lockwood, "Civic Integration and Class Formation."

<sup>76</sup> Marx, "On the Jewish Question (1844)."

<sup>77</sup> Daniels, "Justice, Health, and Healthcare." Cited in Baxi, "The Place of the Human Right to Health and Contemporary Approaches to Global Justice : Some Impertinent Interrogations ".19-20 (emphasis in original).

<sup>78</sup> Gillian McNaughton, "Beyond a Minimum Threshold: The Right to Social Equality," in *The State of Economic and Social Human Rights: A Global Overview*, ed. Lanse Minkler (Cambridge: Cambridge University Press, 2013). 301

<sup>79</sup> Lockwood, "Civic Integration and Class Formation."

<sup>80</sup> Morris, "Squaring the Circle: Domestic Welfare, Migrants Rights, and Human Rights."

contexts. In the context of his work on civic integration and class formation Lockwood observed that when rights are provided for under conditions of socioeconomic inequality they tend to be stratified in various ways, for example, along the lines of nationality, age, gender, ethnicity, immigration status and/or socioeconomic status. Lockwood argued that under these conditions particular social groups tend to be denied access to rights that are enjoyed by others, either as a result of their formal exclusion, which he referred to as ‘civic exclusion’ or their informal exclusion which he referred to as ‘civic deficit’. The concept of civic deficit denotes a situation in which a minority – including a social minority – is prevented from exercising a formally-enjoyed right as a result of a lack resources or because the exercise of the right is derogating in some way. The resources required to exercise a right can be ‘moral’ as well as material, with moral resources referring to ‘the advantages conferred by social standing and social networks; command of information and general know-how including the ability to attain one’s ends through the activation of ‘shared moral sentiments’.<sup>81</sup> It isn’t difficult to identify instances of the phenomenon of ‘civic deficit’. For example, as Benton has noted, in the UK, a state in which workers’ rights have a relatively long history, ‘[h]ealth and safety standards are perpetually under pressure in strongly competitive environments’, and ‘[d]espite generalised rights to trade union membership, many employers are able to resist union organisation effectively [...]’.<sup>82</sup>

Lockwood acknowledges that the distinction between ‘moral’ and ‘material’ resources is often ambiguous, but stresses that it is, nonetheless, important not to underestimate the role of ‘prestige gain’ in securing rights. He points in this regard to the way in which

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<sup>81</sup> Lockwood, "Civic Integration and Class Formation." 536.

<sup>82</sup> Benton, "Do We Need Rights? If So, What Sort?." 33.

‘the “middle class” generally have the edge on the “working class” in their ability to get more out of the same formally equal rights’ as a result of the fact that they tend to be ‘equal or superior in status’ to those who mediate access to educational, health and other public entitlements, and more confident in discovering and influencing the choice of options open to them.<sup>83</sup>

Lockwood distinguishes between three different types of civic deficit: power deficit, stigmatised deficit and fiscal deficit. In order to illustrate the meaning of a ‘power deficit’ Lockwood points to the way in which the formal right of a wage earner to enter into a free and equal contract can be nullified in practice as a result of the superior bargaining power of the employer, remarking that ‘[t]he rectification of this incongruity between *de jure* status and *de facto* power was achieved only after a long drawn out struggle over the legality of trade unions and the right to collective bargaining’.<sup>84</sup> To explain the meaning of stigmatised deficit, Lockwood points to the way in which the administration of particular social security benefits can stigmatise claimants through, for example, having to submit to ‘the humiliations of means-testing’. As Lockwood points out, in a capitalist society the need to rely on state support is usually interpreted as evidence of failure of civic virtue or ‘a mark of inferiority’ that is exacerbated by the way in which beneficiaries are treated as potential fraudsters. The last type of rights deficit discussed by Lockwood – fiscal deficit – is more relevant to civil contractual rights than human or welfare rights and will not therefore be discussed here.

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<sup>83</sup> Lockwood, "Civic Integration and Class Formation." 536.

<sup>84</sup> *Ibid.* 538.

Corresponding to the notions of stigmatised deficit and power deficit are the notions of 'prestige gain' and 'power gain'.<sup>85</sup>

Two case studies which illustrate the way in which the phenomenon of civic deficit functions are presented and discussed in the remainder of this section. In each case, individuals living in poverty were denied access to rights to which they were formally entitled in a manner which affirms the validity of Lockwood's notions of stigmatised deficit and power deficit.

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<sup>85</sup> *Ibid.* 538.

### Case 1: Social Security in South Korea<sup>86</sup>

In 1999, after extensive campaigning by social welfare and human rights NGOs, the National Basic Livelihood Security System was brought into law in South Korea. This scheme was the first national social assistance programme to provide for a right to social security. The content of the act was shaped both by Article 9 of the ICESCR which provides for ‘the right of everyone to social security, including social insurance,’<sup>87</sup> and by prevailing Confucian values. Confucian values, which have been promoted for instrumental reasons by the South Korean state, entail, among other things, a ‘preference for persuasion rather than force for achieving social order, loyalty to family members and [a commitment to] generalised reciprocity’.<sup>88</sup> The content of the National Basic Livelihood Security System therefore reflected both the concept of a right and the traditional Confucian emphasis on family responsibility and self-reliance with Article 3(2) stipulating that benefits would only be provided if family member support (required under various other pieces of legislation) did not meet a specified level. Beneficiaries of the scheme were also required to demonstrate that they were doing their best to ‘maintain and improve their living condition’.<sup>89</sup>

While the creation of the National Basic Livelihood Security System can be viewed as a human rights achievement, Lee-Gong’s study of its implementation demonstrates that access to its entitlements has been restricted as a result of the phenomenon of ‘civic

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<sup>86</sup> The material in ‘Case 1’ is based on the following works unless otherwise indicated: Lee-Gong; "Contestations over Rights: From Establishment to Implementation of the National Basic Livelihood Security System in South Korea," *International Journal of Human Rights*, Vol. 14, No. 6 (2010): 880-95.

<sup>87</sup> UN General Assembly, Article 9, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, available at <http://www.refworld.org/docid/3ae6b36c0.html> [accessed 20 Mar. 2018].

<sup>88</sup> Lee-Gong, "Contestations over Rights: From Establishment to Implementation of the National Basic Livelihood Security System in South Korea." 883.

<sup>89</sup> *Ibid.* 887.

deficit'. Lee-Gong, who participated in the rights-claiming process as part of her research, documented cases in which potential beneficiaries were deterred from pursuing a claim as a result of the social stigma attached to receiving state support. In one case, a woman whose husband had had a stroke and could not work was deterred from making a claim after the visit of a welfare official to her home had embarrassed her husband. The woman's husband 'became furious about the idea of receiving government assistance and did not allow the welfare official into the house, shouting to the welfare official, "why should we receive help?"'<sup>90</sup>

Lee-Gong proceeded to explain that:

Since then, [the woman in question] has not been allowed to bring the issue up again with her husband and had come to seek advice from the NGO, for whom I was working, without informing him. Learning that a welfare official would visit her home again, she gave up on pursuing a claim, too worried about making her husband upset again.<sup>91</sup>

In other cases documented by Lee-Gong, a woman's son left home in protest at her attempt to make a claim because of the stigma associated with doing so and another potential claimant's son objected due to concerns that making a claim might affect his chances of promotion at work. Cases were also documented in which the scheme's officials refused to consider the applications of vulnerable individuals either because they believed that they should be able to work or because they thought that their families should assist them, even when this had been shown to be impossible. One

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<sup>90</sup> Ibid. 890.

<sup>91</sup> Ibid. 881.



applicant who had recently been released from a mental health institution and had been advised by his ‘patron’, a university professor, to make a claim under the Act explained to Lee-Gong that when he tried to make a claim, ‘the response was “you are not eligible” [...]. You are not eligible for this kind of thing as you are not a beneficiary’. The applicant asked the official ‘what a beneficiary is?’ and was told: ‘anyway, you are not a targeted person’.<sup>92</sup> The applicant’s assessment was concluded within minutes with a rejection. However, when the applicant attempted to make a claim a second time, but this time with his university professor patron in attendance – a high-status category of person in most societies – his claim was successful.

### Case 2: Social Protection in India<sup>93</sup>

The experience of the Delhi-based NGO ‘Parivartan’ provides another illustration of the difficulties faced by the poor in accessing their formally-accorded entitlements. Poor people in India have long been entitled to purchase state-subsidised food items such as wheat, rice and sugar through a scheme (welfare programme) called the ‘Public Distribution System’. The food items are made available for sale through a network of ‘ration shops’ and a ration card must be shown in order to purchase them. In 2002 Parivartan started to work with the residents of a Delhi slum and found that they had a litany of complaints about the Public Distribution System. The ration shops were rarely

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<sup>92</sup> Ibid. 888.

<sup>93</sup> Unless otherwise indicated, this case is based on information from the following sources: India Together campaigning news site: <http://indiatogether.org/campaigns/parivartan/> [accessed 4 Mar. 2014]; Pande, Suchi. "The right to information and societal accountability: the case of the Delhi PDS Campaign." *IDS bulletin* 38.6 (2007): 47-55; Empowerment Case Studies: Parivartan—Countering Corruption in Delhi, World Bank (2003); Webb, Martin. "Activating Citizens, Remaking Brokerage: Transparency Activism, Ethical Scenes, and the Urban Poor in Delhi." *PoLAR: Political and Legal Anthropology Review* 35.2 (2012): 206-222; Webb, Martin. "Success stories: rhetoric, authenticity, and the right to information movement in north India." *Contemporary South Asia* 18.3 (2010): 293-304.

open and when they were, food grains were seldom in stock. The residents of the slum were routinely told that the stocks had not arrived and that there was nothing that could be done to expedite their delivery. When items were available, the vendors often tried to prevent the residents of the slum from obtaining their full entitlements, for example, by using inaccurate weighing scales.

Many of the slum's residents were not aware that they were being cheated out of their entitlements. Those who were aware were afraid to complain because the shop vendors were seen as powerful men with 'connections'. Parivartan started to file complaints on behalf of the residents, providing testimonies and evidence of corruption and mismanagement. As a result, it transpired that the ration shop inspectors were in collusion with the vendors. Parivartan consequently started to file applications for access to price shop records pertaining to stocks, sales and opening hours, using the provisions of a newly enacted law called the 'Right to Information Act'.<sup>94</sup> Even before the applications were reviewed, some of the vendors involved responded to the possibility of court action by starting to keep regular opening hours. Over the course of the subsequent few years, the functioning of the Public Distribution System in the communities where Parivartan worked steadily improved. None of the improvements would have been possible without Parivartan's interventions. Few slum residents where Parivartan worked were literate let alone conversant with the legal means through which they could challenge their treatment.

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<sup>94</sup> The Right to Information Act was brought onto the statute books on 15 June 2005. It sets out a practical regime of right to information in order that Indian citizens can access information that is under the control of public authorities. According to Sharma, the act 'is generally considered to be a very strong one within the context of access to information laws throughout the world [...]'. Prashant Sharma, *Democracy and Transparency in the Indian State - the Making of the Right to Information Act* (London: Routledge, 2014). 1.

#### 1.4. The Validity of the Critiques

How valid are the critiques of economic and social rights laid out above? It is true that human rights law ‘stops short of declaring a particular distribution of income or wealth as fair or just’.<sup>95</sup> It is also indisputable that high levels of economic inequality hinder the realisation of human rights. Economic inequality affects the realisation of both economic, social and cultural rights, and civil and political rights. For example, economic inequality leads to stark disparities in access to health, education, housing and other services essential to the enjoyment of economic and social rights, while also undermining access to justice and the right to political participation (as noted above by Baxi).<sup>96</sup> And yet, although inequalities on grounds such as gender, race and disability have long been core human rights concerns (what are often referred to as horizontal inequalities i.e. inequalities between different social groups),<sup>97</sup> ‘the human rights community has barely begun to address the implications of economic inequality for the full range of human rights’.<sup>98</sup> Otherwise put, it has yet to adequately address economic inequality between *individuals*, in other words, vertical inequalities.<sup>99</sup> This is despite the fact that economic inequality has become a prominent issue in national and international political debates over the last few years.

Several scholars appear to disagree with the above analysis and have sought to draw attention to the redistributive effects of economic and social rights work. For example, Heywood analysed the redistributive effects of the work of the Treatment Action

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<sup>95</sup> R. Balakrishnan, J. Heintz, and D. Elson, *Rethinking Economics for Social Justice: The Radical Potential of Human Rights* (Abingdon: Routledge, 2016). 47.

<sup>96</sup> Ignacio Saiz and Gaby Ore Aguilar, *Can human rights make a difference?* OpenGlobalRights. Blog., 2015. Available at <https://www.opendemocracy.net/openglobalrights/economic-inequality-and-human-rights> [accessed 1 Sept. 2018].

<sup>97</sup> R. Balakrishnan, J. Heintz, and D. Elson, *Rethinking Economics for Social Justice: The Radical Potential of Human Rights*.

<sup>98</sup> Ignacio Saiz, and Gaby Ore Aguilar, *Can human rights make a difference?*

<sup>99</sup> R. Balakrishnan, J. Heintz, and D. Elson, *Rethinking Economics for Social Justice: The Radical Potential of Human Rights*.

Campaign, a group of activists who have been using human rights to expand access to healthcare in South Africa.<sup>100</sup> He argues that ‘a campaign [such as the Treatment Action Campaign] that successfully brings down the price of medicine redistributes to poor communities a value that would otherwise have been claimed as profit by shareholders’<sup>101</sup> However, while the fulfilment of economic and social rights is likely to lead to some level of redistribution (especially if financed via a progressive tax system), as Moyn notes, it will not *necessarily* lead to a significant reduction in economic inequality.<sup>102</sup>

Moyn’s contention that even perfectly realised human rights may not be incompatible with radical inequality is, moreover, not necessarily invalid.<sup>103</sup> ICESCR requires states to take appropriate measures towards the full realisation of economic, social and cultural rights to *the maximum of their available resources*.<sup>104</sup> This leaves states with a great deal of wiggle room. For example, some economists argue that the imposition of higher taxes on the rich will lead to an overall reduction in tax revenue as the well-off reduce their economic activity or move their wealth to jurisdictions with lower taxation.<sup>105</sup> This may well reduce economic inequality but it would also reduce the overall level of available resources available to the state and undermine their ability to finance economic and social rights. What guidance does international human rights law offer to states under such circumstances?

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<sup>100</sup> Mark Heywood, "South Africa's Treatment Action Campaign: Combining Law and Social Mobilization to Realize the Right to Health," *Journal of Human Rights Practice*, Vol. 1, No. 1 (2009): 14-36.

<sup>101</sup> *Ibid.* 24.

<sup>102</sup> Moyn, *A Powerless Companion: Human Rights in the Age of Neoliberalism*.

<sup>103</sup> *Ibid.*

<sup>104</sup> Robert E. Robertson, "Measuring State Compliance with the Obligation to Devote the 'Maximum Available Resources' to Realizing Economic, Social, and Cultural Rights," *Human Rights Quarterly*, Vol. 16, No. 4 (1994): 693-714.

<sup>105</sup> For an overview of some of the relevant debates please see: Stuart Adam et al., "Frictions and Taxpayer Responses: Evidence from Bunching at Personal Tax Thresholds," *IFS Working Paper W17/14* (s.l.: Institute for Fiscal Studies, 2017). Available at <https://www.ifs.org.uk/publications/9679> [accessed 1 Sept. 2018].

The above discussion notwithstanding, there are indications that international human rights law actors *are* able to challenge both the prevalence of high levels of economic inequality and some of the structural causes of high levels of economic inequality. The justifications presented for engaging with economic inequality generally relate to the fact that high levels of economic inequality undermine the realisation of human rights.

For example, a review of the policy positions put forward by UN human rights mechanisms and human rights NGOs over the past few decades demonstrates that these actors have started to criticise high levels of economic inequality and policies that exacerbate economic inequality. While I have only been able to identify such practices among NGOs and UN human rights mechanisms, judicial bodies are, at least in theory, also capable of challenging policies which exacerbate economic inequality. In contrast to the views of Kennedy and Yamin presented in Section 1.3.1. above, courts do not only focus on narrow issues which leave the underlying structural causes of rights violations unaddressed. Indeed, many court actions have been aimed at, and have achieved, national policy reforms. For example, in the South African case *Minister of Home Affairs v. Watchenuka*<sup>106</sup> the court struck down a policy prohibiting asylum seekers from undertaking any employment or studying while their claims were being assessed.<sup>107</sup>

One of the earliest criticisms of economic inequality to emerge from the human rights community came in 1992 when the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities (hereinafter ‘the Sub-Commission’), Danilo Türk, characterised income inequality as one of the main

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<sup>106</sup> 2004 (4) SA 326 – 28 November 2003.

<sup>107</sup> Varun Gauri and Daniel M. Brinks, eds., *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World* (Cambridge: Cambridge University Press, 2008).

challenges of the time and declared that the distribution of income within states remained distressingly inequitable.<sup>108</sup> His rationale for engaging with economic inequality was that it would be impossible to fulfil economic, social and cultural rights without taking measures to rectify income inequality.<sup>109</sup> Following a similar logic, in a resolution passed the following year, the Sub-Commission expressed its deep alarm that the gap between the rich and the poor had more than doubled over the previous three decades, noting the negative impact that inequitable income distribution has on economic and social rights.<sup>110</sup> More recently, in a 2015 report, the Special Rapporteur on extreme poverty and human rights, Philip Alston, examined the relationship between extreme poverty and extreme inequality. He urged the international human rights community to pay more attention to extreme inequality as one of the ‘drivers of extreme poverty and as one of the reasons why over one quarter of humanity cannot properly enjoy human rights [...]’.<sup>111</sup> Among other things, Alston contended that extreme inequality stifles equal opportunities, leads to the creation of policies and laws that favour the powerful, and perpetuates discrimination against disadvantaged groups. However, in the absence of a clear understanding of what Alston means by ‘extreme’ inequality, it is difficult to know whether Alston’s proposals would actually significantly reduce the gap between the rich and the poor.

Some NGOs have also started to take on the issue of economic inequality and challenge the structural drivers of inequalities in income and wealth. While international NGOs

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<sup>108</sup> Commission on Human Rights - Subcommission on Prevention of Discrimination and Protection of Minorities, *The Realization of Economic, Social and Cultural Rights*, E/ CN.4/Sub.2/1992/16, 3 July 1992. Available at [https://digitallibrary.un.org/record/146643/files/E\\_CN.4\\_Sub.2\\_1992\\_16-EN.pdf](https://digitallibrary.un.org/record/146643/files/E_CN.4_Sub.2_1992_16-EN.pdf) [Accessed 24 Aug. 2018].

<sup>109</sup> Ibid.

<sup>110</sup> UN Human Rights Council, *Report of the Special Rapporteur on Extreme Poverty and Human Rights*, 8 May 2018. A/HRC/38/33. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/127/23/PDF/G1812723.pdf?OpenElement> [Accessed 19 Sept. 2018].

<sup>111</sup> Ibid.

that have traditionally focused on civil and political rights have arguably been slow to take up this agenda, NGOs which have an explicit focus on economic and social rights such as the Centre for Economic, Social and Cultural Rights and FIAN International (hereinafter 'FIAN') do engage with these concerns. The Centre for Economic, Social and Cultural Rights, for example, has drawn attention to the fact that the income gap between the rich and the poor in Spain is the largest in the Euro Zone, having grown 20 percent since 2007,<sup>112</sup> and has linked this rise in inequality to increased violations of economic and social rights. In this context the Centre for Economic, Social and Cultural Rights has called on Spain's government to adopt economic policies which do not lead to retrogressions or discrimination in the enjoyment of human rights.<sup>113</sup> The Centre has also taken the IMF to task for prescribing policies which fuel inequality and at the same time lead to a roll back in economic and social rights.<sup>114</sup> The NGO FIAN, meanwhile, which has a focus on the fulfilment of the right to food, has interpreted the right to food as requiring that the rural poor in the Global South – who constitute a majority of the world's hungry people<sup>115</sup> – have access to productive resources such as land, seeds and water in order that they are able to sustain a livelihood. As such, FIAN has implicitly called for the redistribution of private property (i.e. land), asserting on one occasion that the 'exclusion from access to productive resources is a violation of basic human rights'.<sup>116</sup> FIAN's interpretation of the right to food – and the social

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<sup>112</sup> Gaby Oré Aguilar, "Overturning Austerity: Spain Heeds Call to Reestablish Universal Access to Healthcare," (s.l.: Centre for Economic and Social Rights, 2018.) Available at <http://www.cesr.org/overturning-austerity-spain-heeds-call-reestablish-universal-access-healthcare> [accessed 1 Sept. 2018].

<sup>113</sup> Ibid.

<sup>114</sup> See the following event titled *Social Protection and Austerity: The Role for the IMF and Human Rights*, convened at the Palais des Nations, Geneva, 22 June 2018. Available at <http://www.cesr.org/geneva-panel%E2%80%94social-protection-and-austerity-role-imf-and-human-rights> [accessed 18 Aug. 2018].

<sup>115</sup> FAO, *The State of Food and Agriculture: Leveraging Food Systems for Inclusive Rural Transformation* (Rome: FAO, 2017).

<sup>116</sup> Priscilla Claeys, *Human Rights and the Food Sovereignty Movement: Reclaiming Control* (London: Routledge, 2015). 68.

movement activism that underlies its interpretation<sup>117</sup> – is also, arguably, beginning to influence international legal experts’ interpretations of the right to food. For instance, the former Special Rapporteur on the Right to Food and present member of the Committee on Economic, Social and Cultural Rights, Olivier De Schutter, discussed the possibility of the ‘emergence of the right to land in international human rights law’ in a 2010 paper. According to De Schutter, ‘the right to land may be seen as a self-standing right, whether it is protected as an element of the right to property, whether it is grounded on the special relationship of indigenous peoples to their lands, territories and resources, or whether it is a component of the right to food’.<sup>118</sup> He stresses, however, that this right has yet to actually be established.<sup>119</sup>

Moreover, as a result of the interconnections between the fulfilment of human rights and the prevalence of economic inequality, numerous policy recommendations ostensibly aimed solely at promoting the realisation of human rights would, if implemented, also tackle some of the structural causes of wealth and income inequalities as a sort of unintended consequence (even where the policy recommendations in question fail to explicitly reference economic inequality). An example is the challenges made to the adoption of fiscal consolidation, adjustment and constriction measures<sup>120</sup> that disproportionately harm the poor. The Centre on Economic, Social and Cultural Rights has challenged such measures on the basis that they undermine human rights.<sup>121</sup> Were these human rights-based proposals to be

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<sup>117</sup> According to Claeys, this expansive understanding of the right to food has been influenced by the activism of the transnational peasant movement Via Campesina. Ibid.

<sup>118</sup> Olivier De Schutter, "The Emerging Human Right to Land," *International Community Law Review*, Vol. 12, No. 3 (2010): 303-34. Abstract.

<sup>119</sup> Ibid. Abstract.

<sup>120</sup> That is, legal and policy changes which aim to lower public expenditure and tame growing sovereign debt burdens.

<sup>121</sup> See the following event titled *Social Protection and Austerity: The Role for the IMF and Human Rights*, convened at the Palais des Nations, Geneva, 22 June 2018. Available at <http://www.cesr.org/geneva-panel%E2%80%94social-protection-and-austerity-role-imf-and-human-rights> [accessed 18 Aug. 2018].



adopted they would impact on underlying structural causes of wealth and income inequalities.

### **1.5. Looking to the Future: The Potential and Limitations of Economic and Social Rights**

Should economic and social rights be rejected as a tool with which to combat poverty in light of the above critiques? This course of action, it is argued here, would be extremely short-sighted. For one, when the poor *are* able to exercise their economic and social rights, the effects can be transformative, even in contexts characterised by socioeconomic inequalities.<sup>122</sup> However, in addition there are indications that human rights law could, in the future, ‘expand’ to incorporate concerns related to socioeconomic equality and the structural causes of socioeconomic inequality.

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<sup>122</sup> Stephen Devereux and Rachel Sabates-Wheeler, "Transformative Social Protection," *Working Paper Series 232* (Brighton: IDS, 2004).

### 1.5.1. Civic Expansion

Some of the critics of human rights whose arguments were discussed above appear to view the content of human rights law as static rather than as continually evolving. This is, perhaps, especially apparent among those who have attached their understanding of human rights to a political ideology. Evans, for example, has argued that dominant expressions of human rights cannot make room for ‘group rights and rights to economic and social equality’ because *liberalism* finds it difficult to accommodate these demands, the implication being that dominant expressions of human rights are inherently liberal.<sup>123</sup> Aryeh Neier, one of the founders of the international human rights NGO ‘Human Rights Watch’, also seems to view the content of human rights as static. In spite of the advancement of economic and social rights over the past few decades and their enshrinement in international and domestic law, Neier insists that: ‘Human rights [...] are a series of limits on the exercise of power’ which prohibit states from ‘interfer[ing] with freedom of inquiry or expression [...], depriv[ing] anyone of liberty arbitrarily [or], denying each person the right to count equally and to obtain the equal protection of the laws’.<sup>124</sup> For Neier, anything related to the ‘distribution, or redistribution of wealth and resources’, has no connection to human rights.<sup>125</sup>

For those who see the content of human rights as fixed, the proposition that human rights law may one day prohibit socioeconomic inequality or effectively tackle some of the structural causes of socioeconomic inequality must appear improbable. However,

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<sup>123</sup> Evans, *The Politics of Human Rights: A Global Perspective*. 37

<sup>124</sup> Aryeh Neier, *Misunderstanding our Mission*, OpenGlobalRights. Blog., 2013. Available at: <https://www.openglobalrights.org/human-rights-past-their-sell-by-date/> [accessed 11 Jan. 2018].

<sup>125</sup> *Ibid.*

as Lockwood has argued in relation to a further component of his civic stratification framework introduced above, moral and material resources can be used to ‘expand’ the scope of human rights, the ‘frontiers’ of which, he contends, are continually being tested by rights activists who aspire to a fuller body of rights and strive to activate ‘shared moral sentiments’ in order to secure their recognition.<sup>126</sup> Lockwood even intimates that rights may have an ‘inner logic’ which serves to facilitate their expansion as their ethos engenders certain expectations, for example, to equality or to the capacity for civic participation.<sup>127</sup> Hunt has echoed this perspective in stronger terms, arguing that the granting of rights to some groups leads inexorably to demands for rights by others.<sup>128</sup> It is in this space that the potential to create rights which adequately tackle socioeconomic inequalities and the structural causes of socioeconomic inequalities lies.

It must be noted here that Lockwood’s framework has been amended by Morris who observed that while the concepts of ‘civic gain’ and ‘civic deficit’ mirror each other, the concepts of ‘civic exclusion’ and ‘civic expansion’ do not correspond with each other neatly. Morris therefore proposed the addition of two further concepts: ‘civic inclusion’, to be paired with ‘civic exclusion’, and ‘civic contraction’, to be paired with ‘civic expansion’.<sup>129</sup> This amended framework will be employed in this thesis.

### 1.5.2. The ‘Legalisation’ or ‘Institutionalisation’ Thesis

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<sup>126</sup> Lockwood, *Civic Integration and Class Formation*. 536.

<sup>127</sup> *Ibid.* 542.

<sup>128</sup> Lynn Hunt, *Inventing Human Rights: A History* (New York: W.W. Norton & Co., 2007).

<sup>129</sup> Lydia Morris, *Managing Migration: Civic Stratification and Migrants’ Rights* (London: Routledge, 2002).

This section of Chapter 1 turns to the question of whether human rights law could, in the future, provide for socioeconomic equality and/or tackle some of the structural causes of socioeconomic inequality.

There is evidence to suggest that there is nothing about the *idea* of a human right that prevents it from being conceived of in radical and far-reaching terms such as in ways which would take on socioeconomic inequalities. Indeed, social movements have constructed non-legalised human rights which go beyond extant human rights law. For example, the transnational peasant movement *Via Campesina* has claimed a ‘right to food sovereignty’ which goes much further than existing human rights law in the economic sphere, ‘suggest[ing] an alternative development path for developing and developed countries alike, one which is not grounded in modernization, progress or economic growth’.<sup>130</sup> Equally, the Mexican revolutionary armed group the Zapatistas ‘have created autonomous forms of participatory governance in which they have given rights to *themselves*, rather than conceiving of rights as being granted by states or international agencies’.<sup>131</sup>

In view of the existence of these non-legalised conceptions of human rights, it is not too much of a stretch to suggest that human rights could be conceived of in ways which enable them to take on socioeconomic inequality. However, for many human rights scholars, the main challenge for the ‘radicalisation’ of human rights does not lie at the level of the *idea* of what a human right is; that is, the *conceptualisation stage* of the human rights law-creation process. It is the *legalisation stage* (also referred to as the

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<sup>130</sup> Claeys, *Human Rights and the Food Sovereignty Movement: Reclaiming Control*. 24.

<sup>131</sup> Kate Nash, *The Political Sociology of Human Rights* (Cambridge: Cambridge University Press, 2015). 33.

*institutionalisation stage*) of the human rights-law creation process that is seen as posing the main challenge.

Human rights can be legalised in the following principal ways: when an international instrument such as a treaty or a covenant is signed or ratified; when a constitutional provision or domestic statute is enacted; or when a court enters a judicial decision.<sup>132</sup>

The *legalisation stage* of the human rights law-creation process is viewed as posing the greatest challenge when it comes to creating radical human rights law because law is created by formal institutions such as courts and legislatures, and formal institutions – according to many scholars – have a strong tendency to reflect and reproduce prevailing relations of power. Pieterse, for example, has argued that the ‘transformative potential of rights is significantly thwarted by the fact that they are typically formulated [...] by institutions that are embedded in the political, social, and economic status quo’.<sup>133</sup> He continues, arguing that this is the case ‘even in relation to socioeconomic rights, despite these rights’ ostensible reconciliation of notions of rights and need, their explicit resonance with the ideal of social justice and their manifest potential to challenge and disrupt settled social power structures’.<sup>134</sup> Blomley, equally, has argued that because of the way in which they tend to reproduce prevailing power structures formal institutions are unlikely to be ‘a fertile soil through which existing relations and structures of power can be effectively challenged’.<sup>135</sup>

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<sup>132</sup> Varun Gauri and Daniel M. Brinks, "Introduction: The Elements of Legalization and the Triangular Shape of Social and Economic Rights," in *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, ed. Varun Gauri and Daniel M. Brinks (Cambridge: Cambridge University Press, 2008).

<sup>133</sup> Pieterse, "Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited." 797.

<sup>134</sup> *Ibid.* 797.

<sup>135</sup> Blomley in Stammers, *Human Rights and Social Movements*.

Numerous empirical case studies support the contention that courts and legislatures, when formulating human rights law, reflect and reproduce prevailing relations of power. For example, Samson and Short's study of indigenous rights in Australia demonstrates how radical human rights claims can be defeated through legalisation processes. In this study, Samson and Short examined the institutionalisation of international human rights protections relevant to indigenous people in the aftermath of a landmark High Court ruling, 'Mabo', which gave Aborigines rights to ancestral lands that had not already been ceded or fairly compensated.<sup>136</sup> In effect, the judgment expanded the scope of indigenous people's rights in a manner which calls to mind the idea of 'civic expansion'. However, the Australian government responded to the case by enacting new legislation, ostensibly to implement the requirements of the legal ruling. However, the interests of indigenous groups were largely ignored in favour of powerful commercial interests such as the mining industry.<sup>137</sup> Thus, while the government 'talked in terms of enshrining and protecting indigenous rights to land', it enacted a statute which made sure that aboriginal groups could not veto development on their land and which created an extremely restrictive native title claims procedure.<sup>138</sup> In light of this development, Samson and Short suggest that the extension of rights to indigenous people in Australia has in reality served as a means of 'restricting what are already inferior rights'.<sup>139</sup>

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<sup>136</sup> Colin Samson and Damien Short, "The Sociology of Indigenous Peoples' Rights," in *Rights - Sociological Perspectives*, ed. Lydia Morris (London: Routledge, 2006). 178.

<sup>137</sup> The mining industry was threatened by the ruling because it made some of its existing land titles of questionable validity as no compensation had been paid to resident aboriginal groups at the time of purchase.

<sup>138</sup> Samson and Short, "The Sociology of Indigenous Peoples' Rights." 178-179.

<sup>139</sup> *Ibid.* 180.

A further empirical case study which supports the thesis that institutions reflect and reproduce prevailing relations of power is that of the 'Save the Narmada' campaign in India. During this campaign, a coalition of social movements and NGOs waged a battle to prevent the construction of a large number of dams on the Narmada River which flows through the states of Madhya Pradesh and Maharashtra and into the state of Gujarat. If constructed, the dams would have displaced tens of thousands of people. After much debate, and significant internal opposition, the Save the Narmada campaign turned to the Supreme Court for assistance. It only did so when it felt it had run out of options, 'because of the desperate situation in the valley and [the campaign's] inability to obtain relief through either the lower judiciary or governmental mechanisms'.<sup>140</sup> At first, the decision to approach the Supreme Court bore fruit. The campaign notched up a series of legal victories including a stay order on further construction in 1995. The stay order was confirmed in hearings in 1996 and 1997. However, on 18 October 2000, in the context of the election of a new government which was 'interested in sending a signal to international investors that India was open for business, especially in crucial sectors like power which were beginning to be disinvested', the Supreme Court issued a judgement allowing the construction of the dam to proceed up to ninety meters. This judgement 'land[ed] like a bombshell' on the campaign. The 18 October 2000 order also made it clear that 'the final decision-making authority belonged to the political arena' and declared that in the case of continued disputes, issues at question 'shall be referred to the Prime Minister whose decision shall be final'. The court even went so far as to 'extoll[...] the virtue of large dams.' This, combined with the Court's previous

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<sup>140</sup> Rajagopal Balakrishnan, "Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle," in *Law and Globalization from Below - Towards a Cosmopolitan Legality*, ed. Boaventura De Sousa Santos and Cesar A. Rodriguez-Garavito (Cambridge: Cambridge University Press, 2005). 198.

criticisms of the ‘Save the Narmada’ campaign’s tactics, ‘dealt major blows to the NGA’s legitimacy and moral capital.’ Thus, many of the protagonists felt that in the end the decision to approach the court had backfired.<sup>141</sup>

Clearly, formal institutions *do* have a tendency to reflect and reproduce prevailing relations of power. However, formal institutions have also, in some cases, stood up to power in ways which have expanded human rights law in progressive (and sometimes radical) ways. One such case involved a legal challenge to the UK Labour government’s 2002 policy to withdraw basic social assistance – including food and shelter – from asylum-seekers who did not claim asylum ‘as soon as reasonably practicable’ upon entering the UK (this group was referred to as ‘late-claimers’).<sup>142</sup> As asylum seekers were also prohibited from undertaking paid employment, this policy had the effect of rendering such individuals destitute. Even though the British judiciary ‘has traditionally been hostile to social and economic rights’,<sup>143</sup> legal activists were able to use civil and political rights guarantees provided for in the European Court of Human Rights – which had been incorporated into UK law via the Human Rights Act of 1998 – to block the operation of the policy and re-establish access to basic social support for all asylum seekers including ‘late-claimers’. While a number of European Convention rights were potentially at risk of being breached under the new policy, it was ultimately overturned on the basis of the argument that the failure to provide basic social assistance while at the same time prohibiting access to employment could breach the Article 3 obligation to refrain from inhuman or degrading treatment (part of the

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<sup>141</sup> *Ibid.* 202.

<sup>142</sup> The information in this case is based on the following study unless otherwise stated: Lydia Morris, *Asylum, Welfare and the Cosmopolitan Ideal: A Sociology of Rights* (London: Routledge, 2010).

<sup>143</sup> Ellie Palmer, *Judicial Review, Socio-Economic Rights and the Human Rights Act* (Oxford: Hart Publishing, 2007).



prohibition against torture). The case therefore expanded a ‘classic’ civil and political right to incorporate economic and social rights (if only for a relatively small group of individuals) and thus offers one instance of their indivisibility.

Balakrishnan’s 2003 study aimed at ‘systematically addressing the role of social movements in international legal transformation’ also demonstrates that formal institutions do not always reflect and reproduce prevailing relations of power. Balakrishnan conducted empirical research into the social processes involved in the transformation of international human rights law.<sup>144</sup> He argued that traditional analysis on the evolution of this body of law has been ‘characterized by two major sets of bias: a bias towards the West, rarely treating the Third World as a maker of legal transformation; and a bias towards the elites in legal transformation, ignoring the importance of the role played by ordinary people.’<sup>145</sup> In fact, Balakrishnan contends, ‘it is impossible to understand how international law and institutions have evolved in the modern period (since the League of Nations) without taking Third World social movements into account.’<sup>146</sup> By way of evidence, Balakrishnan points to the way in which newly liberated Third World states, propelled by popular mobilisations organised around ‘the nation’ and social class, sought to transform international law as they were admitted to the United Nations. They did this in two principal ways: through the introduction of new elements into the doctrinal corpus of international law; and through the use of United Nations General Assembly resolutions.

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<sup>144</sup> Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (Cambridge: Cambridge University Press, 2003). XIII.

<sup>145</sup> *Ibid.* XIV.

<sup>146</sup> *Ibid.*

Principal among the new doctrines asserted by Third World social movements was the doctrine of Permanent Sovereignty over Natural Resources, claimed as an essential constituent of the right to self-determination. This far-reaching new doctrine determined that 'peoples and nations must have the authority to manage and control their natural resources [...]'.<sup>147</sup> Among the most significant UN resolutions secured by Third World social movements, meanwhile, was the Declaration on the Establishment of a New International Economic Order (UN General Assembly Resolution 3201) which articulated the Third World claim to a right to economic development. This Declaration called for an international order:

based in equality, sovereign equality, interdependence, common interest, and cooperation among all states irrespective of their economic and social systems which shall correct inequalities and redress existing injustices, and make it possible to eliminate the widening gap between the developed and the developing countries.<sup>148</sup>

The major themes of the Declaration included both normative goals (i.e. the creation of new doctrines such as Permanent Sovereignty over Natural Resources, a right to nationalization and regulation of multinational corporations) as well as institutional reforms (international monetary reform, facilitation of producer associations etc.).<sup>149</sup>

In addition to the Declaration on the Establishment of a New International Economic Order, a Charter on the Economic Rights and Duties of States, providing for normative standards on key issues such as nationalisation, producer associations and preferential

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<sup>147</sup> Cited in Claey's, *Human Rights and the Food Sovereignty Movement: Reclaiming Control*. 21.

<sup>148</sup> Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*. X.

<sup>149</sup> *Ibid.* 79.

trade arrangements was adopted at the twenty-ninth session of the UN General Assembly (convened in 1974).<sup>150</sup>

### **1.6. The Limitations of the ‘Legalisation Thesis’ and Studying the Social Processes involved in the Creation of Human Rights Law**

The cases presented above demonstrate that law-making institutions such as courts and legislatures can both reflect power and stand up to power. In light of this finding, it is not inconceivable that human rights law could, in the future, develop in ways which tackle socioeconomic inequalities and thereby contribute to the eradication of *relative poverty* and the ability of all people to exercise the rights that they have been formally accorded. In order to gain a better understanding of the potential and limitations of human rights in this regard, it is argued here, it is necessary to study the social processes involved in the creation of human rights law and to make sense of the reasons why it develops in the way that it does.

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<sup>150</sup> *Ibid.* 80.

## 1.7. Summary

Chapter 1 has described and examined the critique that economic and social rights are an inadequate tool with which to combat *relative poverty* and *absolute poverty* because they fail to address socioeconomic inequality or the structural causes of socioeconomic inequality. The chapter argued that although the critique has some limitations, it is on the whole convincing. However, turning to the literature on pre- or non-legalised conceptions of human rights and the literature on the legalisation of human rights, the Literature Review proceeded to argue that there is no inherent reason why human rights/economic and social rights could not, in the future, provide for socioeconomic equality or address the structural causes of socioeconomic equality. Further research into the construction of human rights, from the *conceptualisation* stage to the *legalisation stage* could, this chapter concludes, produce further insights into the potential and limitations of human rights.

## **Chapter 2: Background and Context to the Campaign for a Right to Food Act**

### **2.1. Introduction**

Chapter 2 sets the scene for this thesis' case study: the Indian Right to Food Campaign's battle to secure the enactment of a right to food statute. Section 2.2 provides a brief overview of the socioeconomic context. Section 2.3 turns to the political and legal context, with a focus on the historical development of the Indian regime of rights. In Section 2.4, the evolution of the right to food in India is described. Section 2.5, meanwhile, explains how the Right to Food Campaign emerged and how it is organised while Section 2.6 discusses the reasons why the campaign decided to push for the enactment of a right to food statute. A chapter summary is provided in Section 2.7.

### **2.2. Socioeconomic Context: 'India Shining' or the 'World's Hunger Capital'?**

'India Shining' was a marketing slogan dreamt up by the Indian branch of a global advertising agency in 2004. It was part of a government-funded campaign to promote India internationally and it aimed to 'capture the feeling of economic optimism in the country'.<sup>151</sup> The slogan was subsequently deployed on the campaign trail by the ruling Bharatiya Janata Party (hereinafter the 'BJP') in the run up to the 2004 general elections.<sup>152</sup> However, the main opposition party, the Indian National Congress (hereinafter the 'Congress Party') won by a landslide,<sup>153</sup> perhaps because – as Congress

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<sup>151</sup> Andrew Wyatt, "(Re) Imagining the Indian (Inter) National Economy," *New Political Economy*, Vol. 10, No. 2 (2005): 163-79.

<sup>152</sup> Anoush Rima Tatevossian, "Domestic Society's (Often-Neglected) Role in Nation Branding," *Place Branding and Public Diplomacy*, Vol. 4, No. 2 (2008): 182-90.

<sup>153</sup> Elections.in at: [www.elections.in/parliamentary-constituencies/2004-election-results.html](http://www.elections.in/parliamentary-constituencies/2004-election-results.html) [accessed 13 Nov. 2017].

Party President Sonia Gandhi reportedly remarked at the time – while it may have been shining for some in India, it was definitely not shining for everyone.<sup>154</sup>

The ‘economic optimism’ that the BJP hoped to tap into was based on the understanding that the liberalisation of the economy that had taken place in the 1980s and early 1990s had led to an era of sustained economic growth. The causes of the economic growth witnessed in India from the early 2000s onwards are, in fact, contested.<sup>155</sup> What *is* clear, however, is that in spite of a reduction in poverty from 45.3 to 37.2 percent of the population between 1993/94 and 2004/05,<sup>156</sup> around the time of the Right to Food Campaign’s inception in 2002 to 2003, India retained the dubious honour of being known as the ‘hunger capital of the world’,<sup>157</sup> as it remained home to the largest number of hungry people on the planet.<sup>158</sup> India was also at that time being outperformed on hunger and malnutrition indicators by far poorer countries (calculated in GDP per capita terms) such as Malawi, Haiti and Nepal.<sup>159</sup> When India went to the polls in 2004, 48 percent of children under the age of five were stunted; 43 percent were underweight; 16 percent were severely underweight; and 70 percent were

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<sup>154</sup> Sonia Gandhi’s remarks, apparently made at a campaign rally, were paraphrased and reported by several online news outlets including: <https://www.outlookindia.com/newswire/story/sonia-ridicules-india-shining-campaign/218365> [accessed 13 Nov. 2017] and <https://www.csmonitor.com/2004/0514/p01s02-wosc.html> [accessed 13 Nov. 2017].

<sup>155</sup> Some of the main debates are reviewed in Arvind Panagariya, "India in the 1980s and 1990s: A Triumph of Reforms," s.l.: IMF, 2004. Available at <https://www.imf.org/external/pubs/ft/wp/2004/wp0443.pdf> [accessed 14 Sept. 2018].

<sup>156</sup> Government of India Planning Commission, Press Note on Poverty Estimates 2011 – 2012 at: [http://planningcommission.nic.in/news/pre\\_pov2307.pdf](http://planningcommission.nic.in/news/pre_pov2307.pdf) [accessed 13 Nov. 2017].

<sup>157</sup> India is periodically referred to as the ‘hunger capital of the world’ in the print media. For examples please see the following articles: NDTV, India’s Hunger Games: Here’s how we are failing the people of this country, 15 Sept. 2014 at: <https://www.ndtv.com/offbeat/indias-hunger-games-heres-how-we-are-failing-the-people-of-this-country-666370> [accessed 13 Nov. 2017]; New Indian Express, Mother of All Welfare Policies, 24 Aug. 2009 at: <http://www.newindianexpress.com/opinions/2009/aug/24/mother-of-all-welfare-policies-79919.html> [accessed 13 Nov. 2017].

<sup>158</sup> Figures are for 2001/2003. Please see: FAO, "The State of Food and Agriculture: Food Aid for Food Security?," (Rome: FAO, 2006).

<sup>159</sup> Please see the Global Hunger Index for 2006, published by the International Food Policy Research Institute at <http://www.ifpri.org/publication/global-hunger-index-challenge-hunger> [accessed 13 Nov. 2017].

anaemic. Indicators for adults were not much better: 36 percent of women and 34 percent of men had a body mass index below 18.5, indicative of chronic nutritional deficiency, and 55 percent of women and 24 percent of men were anaemic.<sup>160</sup>

Hunger and malnutrition have multiple causes, ranging from poor dietary practices and inadequate access to safe water and sanitation, to gender discrimination within the family.<sup>161</sup> However, in India, as in many other countries in the world, one of the *main* causes of hunger is absolute poverty: nutritious food is available on the open market, but the 'absolute poor' simply cannot afford to buy it.<sup>162</sup>

The majority of India's 'absolute poor' are landless and live in rural areas<sup>163</sup> where, in the absence of access to land, they eke out a living as casual labourers.<sup>164</sup> The causes of rural poverty are both complex and contested, but many scholars point in the first instance to the stagnation of the rural economy.<sup>165</sup> The contribution of agriculture and associated services to GDP fell from 52 percent in 1950 to just 14 percent in 2013,<sup>166</sup> even though in 2013, 50 percent of India's labour force remained dependent on it.<sup>167</sup> As a result of the stagnation of the rural economy, farmers' incomes are low and

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<sup>160</sup> International Institute of Population Sciences. National family health survey 2005-2005. Mumbai: IIPS, 2000.

<sup>161</sup> Klaus Von Grebmer et al., *The 2009 Global Hunger Index: The Challenge of Hunger - Focus on Financial Crisis and Gender Inequality* (Bonn: International Food Policy Research Institute, 2009).

<sup>162</sup> Jean Drèze and Amartya Sen, *Hunger and Public Action* (Oxford: Clarendon Press, 1989); Amartya Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation* (Oxford: Oxford University Press, 1993).

<sup>163</sup> Oxford Poverty and Human Development Initiative, 'India Country Briefing - Multidimensional Poverty Index Data Bank', (OPHI, University of Oxford 2015).

<sup>164</sup> Anjani Kumar, Praduman Kumar, and Alakh N. Sharma, "Rural Poverty and Agricultural Growth in India: Implications for the Twelfth Five Year Plan," *Indian Journal of Agricultural Economics*, Vol. 66, No. 3 (2011): 269-78.

<sup>165</sup> Utsa Patnaik, "Food Stocks and Hunger: The Causes of Agrarian Distress," *Social Scientist*, Vol. 31, No. 7/8 (2003): 15-41. F. Tomasson Jannuzi, *Agrarian Crisis in India: The Case of Bihar* (Austin: University of Texas Press, 1974).

<sup>166</sup> Planning Commission of India, Data Table, Databook, *GDP at Factor Cost at 2004-05 Prices, Share to Total GDP and % Rate of Growth in GDP* (31 December 2014). Available at:

[http://planningcommission.nic.in/data/datatable/data\\_2312/DatabookDec2014%202.pdf](http://planningcommission.nic.in/data/datatable/data_2312/DatabookDec2014%202.pdf) (4 Mar. 2018)

<sup>167</sup> Ibid.

involuntary unemployment is both persistent and substantial, especially among agricultural labourers. Where work is available, statutory minimum wages are rarely paid.<sup>168</sup>

Structural factors operating at multiple levels play a major role in generating and exacerbating poverty in rural India. World Trade Organization rules have compelled India to remove trade barriers forcing India's poor producers to compete with highly subsidised agricultural imports, lowering domestic agricultural prices and contributing to food price inflation.<sup>169</sup> Structures of class, caste and gender are also intimately connected to poverty in India: disadvantaged castes and tribal communities, especially women, are several times more likely to live in extreme poverty than the wider population.<sup>170</sup>

Rural poverty also underlies a lot of the poverty in India's urban centres. Over the past few decades, millions of poor people from rural areas migrated to cities under distress conditions.<sup>171</sup> Upon arrival, even the dangerous and inadequately paid factory jobs on offer to the poor in countries like Bangladesh and China are scarce as for a confluence of reasons India has failed to develop a large manufacturing sector.<sup>172</sup> In 2016/17,

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<sup>168</sup> Sujoy Chakravarty and Sejal A. Dand, "Food Insecurity in Gujarat: A Study of Two Rural Populations," *Economic and Political Weekly*, Vol. 41, No. 22 (2006): 2248-58. Karsten Paerregaard and Neil Webster, eds., *The Byways of the Poor: Organizing Practices and Economic Control in the Developing World* (Copenhagen: Museum Tusulanum Press, 2012).

<sup>169</sup> Mishra Srijit, "Risks, Farmers' Suicides and Agrarian Crisis in India: Is There a Way Out? Working Paper WP-2007-014," (Mumbai: Indira Gandhi Institute of Development Research, 2007). Vandana Shiva, "The Future of Food: Countering Globalisation and Recolonisation of Indian Agriculture," *Futures*, Vol. 36, No. 6-7 (2004): 715-32. Utsa Patnaik, "Origins of the Food Crisis in India and Developing Countries," *Monthly Review*, Vol. 61, No. 3 (2009): 63-77.

<sup>170</sup> Akter U. Ahmed et al., "The World's Most Deprived: Characteristics and Causes of Extreme Poverty and Hunger," (Washington: International Food Policy Research Institute, 2007).

<sup>171</sup> Kunal Keshri and Ram B. Bhagat, "Socioeconomic Determinants of Temporary Labour Migration in India: A Regional Analysis," *Asian Population Studies*, Vol. 9, No. 2 (2013): 175-95.

<sup>172</sup> Utsa Patnaik, *The Republic of Hunger and Other Essays* (Monmouth: Merlin Press, 2007).



agriculture accounted for 17.32 percent of Gross Value Added (GVA)<sup>173</sup>; industry for 29.02 percent of GVA; and the services sector for 53.55 percent of GVA.<sup>174</sup> Approximately 90 percent of India's workers – whether living in rural or urban areas – work in the informal sector.<sup>175</sup>

Income inequality is also extremely high in India. In 2017, the share of national income accruing to the top 1 percent of earners was at its highest level since 1922 (when income tax was established).<sup>176</sup> The Gini coefficient also deteriorated from 32.5 in 1993 to 37 in 2010 (a Gini coefficient of 0 expresses perfect equality).<sup>177</sup>

### 2.3. Political and Legal Context

India is a post-colonial state. Subsequent to a two hundred-year struggle for national liberation, freedom from British rule was attained on 15 August 1947. The newly independent state proceeded to establish a democratic federal republic with a Westminster-style parliamentary system, a strong central government and a unified judiciary headed by a supreme court.<sup>178</sup>

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<sup>173</sup> Gross Value Added measures the contribution of an individual producer, industry, sector or region to an economy.

<sup>174</sup> K. Sivasubramaniyan, "Sectoral Contribution and their Relevance in India: With Special Reference to Three South Indian States," *International Journal of Research - Granthaalayah*, Vol. 5, No. 9 (2017): 116-23.

<sup>175</sup> Srijia, A., and Shrinivas V. Shirke. "An Analysis of the Informal Labor Market in India - Special Feature." Confederation of Indian Industry, 2014. Naik, Ajaya Kumar "Informal Sector and Informal Workers in India." In *Special IARIW-SAIM Conference on "Measuring the Informal Economy in Developing Countries"*. Nepal, 2009.

<sup>176</sup> Lucas Chancel and Thomas Piketty, "Indian Income Inequality, 1922-2014: From British Raj to Billionaire Raj?," *WID World Working Paper Series No. 2017/11* (s.l.: World Inequality Lab, 2017). Available at <https://wid.world/document/chancelpiketty2017widworld/> [Accessed 4 Jan. 2018].

<sup>177</sup> Ravi Kanbur, Changyong Rhee, and Juzhong Zhuang, eds., *Inequality in Asia and the Pacific: Trends, Drivers, and Policy Implications* (London: Asian Development Bank & Routledge, 2014).

<sup>178</sup> Shylashri Shankar and Pratap Bhanu Mehta, "Courts and Socioeconomic Rights in India," in *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*, ed. Varun Gauri and Daniel M. Brinks (Cambridge: Cambridge University Press, 2008).

The Indian Constitution was drafted between 1947 and 1949 by a 'Constituent Assembly', and came into effect in 1950. The question of whether to include economic and social rights in the Constitution as fully justiciable rights or as non-justiciable guiding principles was the subject of virulent debate during the drafting period, a discussion which mirrored and engaged with debates taking place at the international level i.e. the discussions that surrounded the drafting of the Universal Declaration of Human Rights.<sup>179</sup> As it became clear that the proponents of including economic and social rights as fully justiciable rights were losing the debate, individuals on both sides of the divide began to question whether the inclusion of non-enforceable 'moral precepts' in a legal text served any useful purpose, a question which is echoed today in relation to the value or lack thereof of 'non-enforceable' rules of international human rights law.<sup>180</sup> Two Constituent Assembly members who supported the establishment of fully enforceable economic and social rights even proposed that economic and social rights either be made justiciable or be removed from the Constitution entirely.<sup>181</sup> In the end, the arguments of the jurist and Dalit rights activist B.R. Ambedkar won out. Ambedkar convinced his fellow Constituent Assembly members that economic and social rights *were* of value, even if they lacked the force of law; and largely as a result of his interventions, economic and social rights were provided for following the Irish model as non-justiciable 'Directive Principles of State Policy' with civil and political

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<sup>179</sup> Niraja Gopal Jayal, *Citizenship and Its Discontents: An Indian History* (Cambridge MA: Harvard University Press, 2013).

<sup>180</sup> Kalyani Ramnath, "'We the People': Seamless Webs and Social Revolution in India's Constituent Assembly Debates," *South Asia Research*, Vol. 32, No. 1 (2012): 57-70. As noted by Roach, international law is dependent on 'persuasion and dialogue' for enforcement while domestic law utilises a 'coercive process'. Kent Roach, "The Challenges of Crafting Remedies for Violations of Socio-Economic Rights," in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, ed. Malcolm Langford (Cambridge: Cambridge University Press, 2009).

<sup>181</sup> Jayna Kothari, "Social Rights Litigation in India: Developments of the Last Decade," in *Exploring Social Rights: Between Theory and Practice*, ed. Daphne Barak-Erez and Aeyal Gross (Oxford: Hart, 2007).

rights enshrined as fully enforceable ‘Fundamental Rights’.<sup>182</sup> Although the Directive Principles of State Policy were not justiciable, they were considered to be ‘fundamental in the governance of the country’ and, among other things, they required the state to apply them when formulating legislation.<sup>183</sup>

In first decades after Independence, the Indian Supreme Court upheld the distinction between the Fundamental Rights and the Directive Principles of State Policy. By the 1970s, however, the higher judiciary had started to incorporate economic and social rights such as the right to health, the right to food, the right to education and the right to shelter into the Fundamental Rights to equality (Article 14) and life and liberty (Article 21).<sup>184</sup> The major breakthrough, however, came in 1973 with the litigation of the ‘Fundamental Rights Case’. This opened the door for the Directive Principles of State Policy to be considered aids to the interpretation of the Constitution and, more specifically, to the interpretation of the scope and content of the Fundamental Rights which could henceforth be interpreted more expansively.<sup>185</sup> Thus, more than two decades after the drafting of the Constitution, B.R. Ambedkar’s arguments about the importance of including economic and social rights, even if only as non-justiciable principles were posthumously validated.

#### **2.4. The Evolution of the Right to Food in India**

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<sup>182</sup> Shewta N. Mishra, ed. *Socio-Economic and Political Vision of Dr. B.R. Ambedkar* (New Delhi: Concept Publishing Company, 2010).

<sup>183</sup> Jayal, *Citizenship and Its Discontents: An Indian History*.

<sup>184</sup> Shankar and Mehta, "Courts and Socioeconomic Rights in India."

<sup>185</sup> Muralidhar, "Select National Jurisdictions - India," in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, ed. Malcolm Langford (Cambridge: Cambridge University Press, 2009).

In 1982, in *Francis Coralie v. Union Territory of Delhi*,<sup>186</sup> the Supreme Court interpreted the right to life (Article 21) to include the right to food. Specifically, the Supreme Court held that the right to life is not limited to the ‘protection of limb or faculty’, but includes ‘the right to live with human dignity and all that goes along with it, namely, the bare necessities of life [including] adequate nutrition’.<sup>187</sup> Over the subsequent two decades, several attempts were made to use interpretation of the court in *Francis Coralie v. Union Territory of Delhi* to tackle the situation of hunger in India, but these were unsuccessful.<sup>188</sup>

In 2001, a group of human rights and social justice activists decided once again to try to litigate the right to food. The decision to do so can be traced to a meeting attended in the early part of that year by Colin Gonsalves, one of India’s most high profile human rights lawyers, Kavita Srivastava, a well-known human rights defender working at the Public Union of Civil Liberties (a national human rights NGO), and Jean Dreze, a high profile development economist and anti-poverty activist.<sup>189</sup> All three were later to become leading members of the Right to Food Campaign. Gonsalves, Srivastava and Dreze had convened in Jaipur, the capital of the state of Rajasthan, to discuss a number of human rights matters (unrelated to food and hunger). However, in light of the fact that Rajasthan was experiencing a third consecutive drought year and ‘starvation deaths’ in rural areas had started to be reported by local activists, the group decided to visit some of the nearby villages. ‘An hour’s drive from Jaipur and [...] we were in

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<sup>186</sup> *Francis Coralie Mullin v. Adm'r*, (1981) 2 S.C.R. 516, 518 (India).

<sup>187</sup> *Ibid*; Deva, Surya, ed. *Socio-economic Rights in Emerging Free Markets: Comparative Insights from India and China*. Routledge, 2015.

<sup>188</sup> Human Rights Law Network, *Right to Food* (Delhi: Human Rights Law Network, 2009); Surya Deva, ed. *Socio-economic Rights in Emerging Free Markets: Comparative Insights from India and China* (London: Routledge, 2015).

<sup>189</sup> Human Rights Law Network, *Right to Food*.

another world – that of the dispossessed. People had no food at all [...]', recalled Gonsalves writing several years later.<sup>190</sup> Local NGOs had long been calling for the state to take action, but to little effect. It was in this context that Gonsalves suggested that the group file a Public Interest Litigation (PIL) suit, aimed at forcing the government to act, although he believed that 'the chances of admission were remote'.<sup>191</sup> Srivastava was evidently equally pessimistic: she later described the petition as a 'desperate attempt' to get the government to intervene.<sup>192</sup> The reluctance of these activists to approach the courts has parallels with the Save the Narmada case discussed in Chapter 1. Save the Narmada campaign activists were also reticent to appeal to the courts 'as it was felt that the courts were "protectors of the powerful"'.<sup>193</sup> They only decided to do so 'because of the desperate situation in the valley and [the campaign's] inability to obtain relief through either the lower judiciary or governmental mechanisms'.<sup>194</sup> Both the Save the Narmada and the right to food cases undermine Kennedy and Brown's contention that human rights 'occupies the field of emancipatory possibility', rendering more valuable social change strategies less available.<sup>195</sup> In the above two cases, the activists felt that they had already exhausted all of the other strategies available to them.

With the backing of approximately fifty Rajasthan-based NGOs, some of which acted as an informal 'support group' to the legal team, the Public Union for Civil Liberties

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<sup>190</sup> Ibid. V.

<sup>191</sup> Ibid. (4<sup>th</sup> edn.) 5.

<sup>192</sup> Ibid. XIX.

<sup>193</sup> Balakrishnan, *Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle*. 198.

<sup>194</sup> Ibid.

<sup>195</sup> The quotation is from Kennedy. 8; Wendy Brown, "'The Most We Can Hope For...': Human Rights and the Politics of Fatalism," *The South Atlantic Quarterly*, Vol. 103, No. 2/3 (2004): 451-63.

filed a writ petition<sup>196</sup> before the Supreme Court in April 2001.<sup>197</sup> The petition was founded on two main legal arguments. First, the petition invoked the Indian *Famine Codes*, colonial-era laws that obligated the state to provide employment or food to people in need in a famine area. Second, the petition invoked the right to food which, as noted above, had been read into the right to life in the 1981 case *Francis Coralie v. Union Territory of Delhi*.<sup>198</sup> Framed in a drought context, three legal questions were posed to the court. First, whether the right to life obligated the state to provide free food to people who were starving but too poor to buy food. Second, whether the right to life did indeed include the right to food as per the decision of the court in the 1981 case. Third, whether the right to food obliged the state to provide food to drought-affected people who were unable to purchase it. The petition then urged the court to order the central government and six state governments (in states with drought-affected regions) to take action.<sup>199</sup>

Belying all expectations, the court responded favourably. It not only confirmed that the right to life included the right to food, but extended the scope of the petition to the entire country (i.e. the court took the case out of a drought context which restricted its scope to six states). The court also rejected out of hand the government's claim that it lacked the resources to eradicate hunger,<sup>200</sup> despite the fact that in India, when faced

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<sup>196</sup> Matters involving the interest of the public at large can be moved by any individual or group of persons either by filing a *Writ Petition* at the Filing Counter of the Court or by addressing a letter to the Chief Justice of India highlighting the question of public importance for invoking this jurisdiction. For further information about this process please see: <http://supremecourtofindia.nic.in/jurisdiction> [accessed 9 Mar. 2018].

<sup>197</sup> Basudeb Guha-Khasnobis and Srinivasan Vivek, "The Rights-Based Approach to Development: Lessons from the Right to Food Movement in India," (Helsinki: UNU-WIDER, 2007).

<sup>198</sup> Human Rights Law Network, *Right to Food*.

<sup>199</sup> PUCL vs. Union of India and others, Civil Writ Petition 196 of 2001.

<sup>200</sup> Lauren Birchfield and Jessica Corsi, "Between Starvation and Globalization: Realizing the Right to Food in India," *Michigan Journal of International Law*, Vol. 31, No. 4 (2010): 691-880. Human Rights Law Network.

with issues that raise the question of resource distribution ‘the courts have often taken the view that their institutional role prevents them from acting on those issues’.<sup>201</sup>

According to Gonsalves, ‘[w]ith the expansion of the framework of the case to the national level, it was necessary to think afresh on [its] scope and ambit [...]’.<sup>202</sup> The petitioners discussed and debated a range of possible demands and in the end, decided to build them around existing social protection schemes (hereinafter ‘entitlements’ or ‘schemes’) ‘that were not really legal entitlements and could be discontinued by the State at any time’.<sup>203</sup> Gonsalves felt that the schemes ‘provided a coherent and consistent way forward since they were well understood and the State was not inclined to disown them during the Court proceedings’.<sup>204</sup>

Following a subsequent interchange between the government and the petitioners, the government claimed that it was already tackling hunger in India and referred specifically to eight schemes. The larger schemes referred to include the following:

- The Public Distribution System which provided subsidised wheat and rice to families categorised as living ‘below the poverty line’ or ‘BPL’ (discussed in Chapter 1 in relation to the work of the NGO Parivartan);
- The Mid-Day Meals Scheme which required state schools to provide a freshly cooked nutritious meal to primary school children on a daily basis; and

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<sup>201</sup> Balakrishnan, *Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle*. 188.

<sup>202</sup> Human Rights Law Network, *Right to Food*. 9.

<sup>203</sup> *Ibid.* 9.

<sup>204</sup> *Ibid.* 9.

- The Integrated Child Development Services Scheme which provided supplementary nutrition and healthcare services (such as immunisation) to children under the age of six.<sup>205</sup>

The petitioners examined the schemes and found that they were inadequate in scope and/or not being properly implemented, and presented evidence to that effect in court.<sup>206</sup> In response, the court issued an interim order requiring the government to *ensure* that each of the schemes was being effectively implemented.<sup>207</sup> This interim order – which came to be called the ‘landmark’ November order of 2001 – in effect converted the eight schemes into constitutionally-protected legal entitlements which the relevant beneficiaries could henceforth claim through the courts – no small achievement in a country in which ‘the limited philosophy of welfare intervention [had] in practice been embedded in ideas of charity and state paternalism’ up until that point.<sup>208</sup>

The November order provided concrete content to the right to food in India for the first time. This was a big win for the Right to Food Campaign. As the South African legal scholar Pieterse has stressed, it is only through the translation of abstract constitutional guarantees of economic and social rights into concrete legal entitlements that constitutional guarantees are able to ‘connect concretely to the needs and experiences of their beneficiaries and to bring about a tangible improvement in their living

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<sup>205</sup> Ibid. Supreme Court Order 18 November 2001.

<sup>206</sup> Ibid.

<sup>207</sup> Supreme Court Order 18 November 2001.

<sup>208</sup> Human Rights Law Network, *Right to Food*; Jayal, *Citizenship and Its Discontents: An Indian History*. 169 (Quotation comes from Jayal).



conditions'.<sup>209</sup> The success of efforts to give concrete content to economic and social rights through litigating the constitution in other cases in India and in other jurisdictions has, moreover, been highly variable.<sup>210</sup>

The landmark November 2001 order sparked another round of strategy discussions. Srinivasan, a member of the support group at the time, explained that: 'There was, on the one hand, a desire to ask for far-sighted directions [...]. At the same time, there was a need to be strategic in taking up issues that the court is likely to accept'.<sup>211</sup> Due to the time that has lapsed since the events in question, it has not been possible to determine what the 'far-sighted directions' were. However, in the end the group decided that it would be judicious to continue to build their demands around existing government initiatives, and especially around the eight schemes that were now recognised as constituting constitutionally-protected legal entitlements.<sup>212</sup> The petitioners also decided to try to expand the scope of and enhance the quality of the schemes by invoking generally accepted human rights principles.<sup>213</sup> As Morris has demonstrated in relation to UK asylum and welfare cases, 'general principles' or 'background values' can play a significant role in the interpretation of rights – especially when the rights are 'new'. Indeed, in the cases examined by Morris, 'the more expansive interpretations occur[ed] where judges [took] recourse to general principles'.<sup>214</sup> The main human

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<sup>209</sup> Pieterse, "Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited." 799.

<sup>210</sup> In South Africa, for example, the Supreme Court has tended to 'den[y] that socio-economic rights embody immediately enforceable individual claims' and resort to 'an abstract and procedural mode of ascertaining state compliance with the obligations imposed by the rights'. *Ibid.* 798.

<sup>211</sup> Guha-Khasnobis and Vivek, "The Rights-Based Approach to Development: Lessons from the Right to Food Movement in India." 3.

<sup>212</sup> Interview with Vivek Srinivasan (real name) on 19 April 2016 by telephone.

<sup>213</sup> For further information on human rights principles relevant to the right to food please see: UN Committee on Economic, Social and Cultural Rights (CESCR), *General Comment No. 12: The Right to Adequate Food (Art. 11 of the Covenant)*, 12 May 1999 para 7-13.

<sup>214</sup> Lydia Morris, "Welfare, Asylum and the Politics of Judgment," *Journal of Social Policy*, Vol. 39, No. 1 (2010): 119-38. 135.

rights principles invoked by the Right to Food Campaign were ‘accessibility’, ‘reasonableness’ and ‘non-arbitrariness’.<sup>215</sup>

## 2.5. The Right to Food Campaign

The Right to Food Campaign is an informal coalition of local, state-level and national-level civil society actors including NGOs, social movements and trade unions, although NGOs make up a majority of its membership.<sup>216</sup> The campaign emerged as a result of the activities and networking that took place around the right to food case in the period 2001 to 2002/3. Before the case was filed, India’s NGOs and some trade unions and social movements had been working to address hunger and malnutrition for decades. However, as the first court orders came in, ‘there was a noticeable revival’ among these actors, ‘almost as if [...] [they] had received a shot in the arm’.<sup>217</sup> In the months and years following the filing of the case, these NGOs, trade unions and social movements worked individually and collectively to support the court, for instance, by conducting field research to support the legal arguments. By doing so they formed the type of support structure that Epp has identified as being critical to transformative legal action.<sup>218</sup> They also pressed the relevant authorities to implement the court orders and worked with the rights-claimants, assisting them to access their entitlements as in the case of Parivartan discussed in Chapter 1. These activities facilitated the formation of several national-level networks such as the ‘national campaign for the right to food’, the ‘campaign for children’s right to food’ and the ‘campaign for women’s right to

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<sup>215</sup> Guha-Khasnobis and Vivek, "The Rights-Based Approach to Development: Lessons from the Right to Food Movement in India." Interview with Vivek Srinivasan (real name) on 19 April 2016 by telephone.

<sup>216</sup> Shareen Hertel, "Hungry for Justice: Social Mobilization on the Right to Food in India," *Development and Change*, Vol. 46, No. 1 (2014): 72-94.

<sup>217</sup> Human Rights Law Network, *Right to Food*. X.

<sup>218</sup> Charles R. Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective* (Chicago: University of Chicago Press, 1998).

food'. State-level networks were also created during this period (i.e. the 'Delhi Campaign', the 'Rajasthan Campaign', the 'Karnataka Campaign').<sup>219</sup>

Most Right to Food Campaign members work with or on behalf of India's poorest and most marginalised communities, albeit in a diversity of ways. In addition to a small number of (law-focused) human rights organisations such as the Human Rights Law Network (with which Colin Gonsalves is associated) and the Public Union for Civil Liberties (which filed the 2001 case), the membership includes NGOs that work to empower women, promote breastfeeding, protect the rights of Dalits, advance labour protections for workers in the informal sector, improve civic governance in urban areas, support and empower agricultural producers, and promote child health.<sup>220</sup> India's farmers' movements such as the Karnataka State Farmers' Association (KRRS) and the Bhartya Kisan Union (BKU) are not members of the Right to Food Campaign, a fact which becomes relevant during discussions of the Right to Food Campaign's conceptions of the right to food and the strategies that the campaign used.<sup>221</sup>

The Right to Food Campaign has no formal hierarchy. It does have a 'Steering Group' which is primarily made up of representatives of national and state-level NGOs (or networks of NGOs), although there are also several representatives of social movements and trade unions. The Steering Group is tasked with 'provid[ing] direction to the Campaign's activities' with the guidance of 'the mandate and policies laid out the annual convention' (which in practice takes place every two or three years because

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<sup>219</sup> This process was explained by several interviewees.

<sup>220</sup> Basic mapping of member organisations conducted by the author.

<sup>221</sup> This was mentioned by five interviewees including the leader of a farmers' movement.

of the costs involved).<sup>222</sup> Although there is no formal hierarchy, seven interviewees made reference to the existence of a small group of ‘especially influential’ campaign leaders. Those named include the three activists who took the decision to approach the courts (Gonsalves, Srivastava and Dreze) and several other high profile civil society figures including Harsh Mander, the Director of the Centre for Equity Studies; Biraj Patnaik, a former principal advisor to the Supreme Court Commissioners on the right to food case (the Commissioners were appointed by the Supreme Court to monitor the implementation of the interim orders)<sup>223</sup>; and Annuradha Talwar, a social justice and women’s rights activist.

Unlike the rights-claimants, nearly all of these figures are members of India’s urban English-speaking middle and upper classes (and castes),<sup>224</sup> which lends weight to Lockwood’s assertion that those who seek to expand rights tend to be drawn from the elites rather than the working classes.<sup>225</sup> Looking beyond the leadership, it seems likely that most of the individuals who worked for Right to Food Campaign member NGOs would also have been at least ‘middle class’ simply by virtue of the fact that they were employed by a formally-instituted organisation. However, there were also individuals involved in the campaign who were in less socioeconomically privileged positions such as trade union activists<sup>226</sup> (this thesis returns to the social composition of Right to Food Campaign members and leaders in the subsequent chapters).

## 2.6. The Decision to Campaign for a Right to Food Act

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<sup>222</sup> Please see the Right to Food Campaign’s ‘Collective Statement’. Available at: [http://www.righttofoodindia.org/data/rtf\\_campaign\\_collective\\_statement09.pdf](http://www.righttofoodindia.org/data/rtf_campaign_collective_statement09.pdf) (9 Mar. 2018)

<sup>223</sup> Hertel, "Hungry for Justice: Social Mobilization on the Right to Food in India."

<sup>224</sup> Ibid. Sharma, *Democracy and Transparency in the Indian State - the Making of the Right to Information Act*. Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

<sup>225</sup> Lockwood, "Civic Integration and Class Formation." 543.

<sup>226</sup> Interview with Sonia (pseudonym) on 5 August 2014, India; Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

In the years after the right to food case was filed, the petitioners filed hundreds of affidavits and obtained several dozen interim court orders which expanded and/or strengthened the right to food in a variety of ways.<sup>227</sup> By around 2007 to 2008, however, work on the court case had started to slow down.<sup>228</sup> It was in this context that the Right to Food Campaign decided to launch a campaign for the enactment of a right to food statute in the run up to the 2009 general elections. Interviewees expressed different views as to why the Right to Food Campaign decided to call for a statute at that particular juncture. Two interviewees, both of whom were leading members of the campaign, said that it was necessary to secure legislation as the ‘mood of the court’ could change and turn against them, and it was therefore tenuous to rely on the interim orders as the basis for the schemes.<sup>229</sup> Another leading member of the campaign said that legislation was needed because it was undemocratic to rely on the courts indefinitely.<sup>230</sup> One campaign member, however, who had spent a lot of time with the leadership of the campaign, believed the decision to push for an act was somewhat arbitrary. Her understanding was that the campaign lobbied the major political parties in the run up to the 2009 parliamentary elections with a view to securing rights-shaped manifesto pledges, and that the Congress Party (the incumbent) selected the right to food statute out of a several proposed options.<sup>231</sup>

## 2.7. Summary

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<sup>227</sup> Please see the Right to Food Campaign’s ‘Tool for Action’ for the Supreme Court Orders. Available at: <http://www.righttofoodcampaign.in/legal-action/supreme-court-orders> (4 Mar. 2018); Human Rights Law Network, *Right to Food*.

<sup>228</sup> Interview with Krishna (pseudonym) on 13 August 2014, India; Interview with Bharka (pseudonym) on 4 September 2014, India.

<sup>229</sup> Interview with Anil (pseudonym) on 27 August 2016, India; Interview with Bharka (pseudonym) on 4 September 2014, India.

<sup>230</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>231</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

Chapter 2 provided a brief factual background to the Right to Food Campaign's battle for the enactment of a right to food law. It addressed the socioeconomic, political and legal contexts, the evolution of the right to food in India, the emergence of the Right to Food Campaign and the decision of the Right to Food Campaign to push for the creation of a right to food statute. The next chapter turns to the methodology employed in this study.

## **Chapter 3: Methodology**

### **3.1. Introduction**

Chapter 3 presents the methodology for this study. Section 3.2 provides a brief note on the reasons why I decided to conduct research in the broad area of ‘human rights in practice’. In Section 3.3, the Research Design for this study is laid out and discussed. The Research Design section covers the following topics: case study selection; positionality; the research questions and, importantly, the manner in which the research questions evolved during the research process; data collection; and data analysis (‘framework analysis’ and ‘process tracing’). Section 3.4 addresses ethical considerations such as informed consent and confidentiality and Section 3.5 discusses the limitations of the study. This chapter aims to offer a reflective account of the research process which captures both the challenges faced and the lessons learned.

### **3.2. Motivation for the Study**

I was motivated to conduct doctoral research in the broad area of ‘human rights in practice’ as a result of my professional experience working in the human rights and human rights based-development sectors. I became enthralled with the idea of human rights and with the potential of human rights to contribute to positive social change in my early twenties. I therefore started to work as an activist with Amnesty International groups and subsequently secured paid employment with the following organisations: the rights-based development NGO Christian Aid (UK); the United Nations Development Programme (Palestine-West Bank); and the Palestinian human rights

NGO ‘Al Mezan Centre for Human Rights’ (Palestine-Gaza). While working with these organisations I became increasingly aware of:

- The way in which organisational constraints (i.e. the need to secure funding) and internal power dynamics shape the design and implementation of rights-based initiatives;
- How the balance of power at the domestic and international levels impacts upon the realisation of rights; and
- How certain ‘target groups’ or ‘programme beneficiaries’ such as women, children and prisoners face particular difficulties when they try to exercise their rights.

I was unable to make sense of the phenomena that I was observing in the ‘field’ – let alone attempt to formulate solutions – and I therefore decided to undertake doctoral research in the broad area of ‘human rights in practice’. Initially, I planned to conduct research into the way in which the United Nations Development Programme engaged with human rights (assuming that I could obtain access) as I felt that their interpretation of and engagement with human rights was problematic. For example, in many respects it seemed to be shaped more by the demands of the ‘powers that be’ in New York and Geneva than the needs of local populations. After immersing myself in the literature and auditing several postgraduate modules in human rights law, however, I realised that the (in)adequacy of the normative content of human rights posed as much of a challenge as the ability of organisations such as the United Nations Development Programme to meaningfully support the realisation of human rights. Therefore, my attention turned briefly to legal analysis. The question of concern to me at this point



was whether the normative content of human rights adequately addressed the most pressing needs of the poor; or, as Evans has put it, whether ‘the wretched may aspire to an alternative view of dignity, rights and the “good life” than that offered by the [human rights] saviour’.<sup>232</sup>

As my sociological understanding of human rights evolved, however, I came to understand that there *is* no universally agreed-upon interpretation of the normative content of human rights; that human rights are understood differently by different social actors. At this point, the focus of my research turned to the study of how human rights actors understand and interpret human rights in concrete social contexts. This focus evolved further during the fieldwork as discussed below.

### **3.3. Research Design**

#### **3.3.1. Case Study Selection**

After considering several possible ‘rights in practice’ case studies, I decided to conduct research into the work of India’s Right to Food Campaign. I selected this group of actors because their documentation indicated that they understood the right to food in broad, expansive terms that went beyond the narrow interpretations of human rights that have been the subject of critique by human rights sceptics.

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<sup>232</sup> Evans, *The Politics of Human Rights : A Global Perspective*. 37.

### 3.3.2. Positionality

As explained in the introduction to this thesis, I enrolled in the PhD programme with a view to studying the potential contributions and limitations of human rights as they relate to struggles to combat absolute and relative poverty. After conducting desk-based research into a number of potential PhD topics I decided to focus on the issue of ‘what human rights mean’ to different social actors. This was as a result of the prevalence of critiques which contend that the normative content of human rights is inadequate, and that as a result of this inadequacy, the contribution that human rights can make to the eradication of poverty is limited.

I necessarily looked to the Global South for ‘human rights in practice’ case studies. Although on the rise, activism around economic and social (human) rights – the rights that are the most likely to make an effective contribution to anti-poverty struggles – remains nascent in the Global North; certainly when compared to the larger-scale and longer-term battles that have been fought in countries such as India, Brazil and South Africa.<sup>233</sup> Paradoxically, at the same time much of the sociological and political science literature emanating from the Global North over the past few decades has failed to evaluate human rights practices in the Global South, and factor these practices into critiques of the ‘human rights project’.<sup>234</sup>

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<sup>233</sup> In the UK, for example, the first economic and social ‘human’ rights NGO focused on domestic concerns, ‘Just Fair’, was not set up until 2011. Please see <http://justfair.org.uk/about-us/> [Accessed 20 Sept. 2018]. By contrast, activists in India, Brazil and South Africa have been engaged in nation-wide campaigns for economic and social rights for around two decades. For examples of such campaigns please see the following studies: Heywood; Gauri and Brinks, *Courting Social Justice: Judicial Enforcement of Social and Economic Rights in the Developing World*; Reetika Khera, ed. *The Battle for Employment Guarantee* (New Delhi: OUP, 2011); Danuta Chmielewska and Darana Souza, "The Food Security Policy Context in Brazil - Country Study No. 22," (Brasilia: International Policy Centre for Inclusive Growth, 2011).

<sup>234</sup> Shareen Hertel, "A New Route to Norms Evolution: Insights from India’s Right to Food Campaign," *Social Movement Studies*, Vol. 15, No. 6 (2016): 610-21.

I selected the work of India's Right to Food Campaign as a case study because its conception of the right to food appeared to be far-reaching and radical in ways which counter the views of human rights critics regarding the nature of human rights.

My focus on the Global South by no means reflects a view that human rights interventions primarily need to be 'implemented "out there" in the "Third World" without requiring a critical view at oneself'.<sup>235</sup> It is beyond dispute that the origin of a great many violations of human rights perpetrated in the Global South lie in practices that take place in the Global North.<sup>236</sup> Equally, in the context of the post-2008 imposition of austerity programmes which disproportionately target the poor, violations of economic and social rights in many countries in the Global North are at a higher level than they have been for years.<sup>237</sup>

Conducting research in the Global South as a researcher from the Global North raises particular problems, however. As Sultana notes, researchers from the Global North run the risk of perpetuating neo-colonial representations and exhibiting Western biases.<sup>238</sup> Arguably, however, Sultana overgeneralises when she asserts that issues such as literacy, class, access and a 'sense of equality' usually present fewer barriers to implementing institutional ethics formalities in settings in the Global North. Inequalities of various kinds remain deeply entrenched in much of the Global North, while research in the Global South does not have to involve working with research

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<sup>235</sup> Uvin, *Human Rights and Development*. 127.

<sup>236</sup> For example, serious human rights violations are perpetrated daily in the Global South as a result of the effects of WTO and IMF policies which are mainly shaped by the stronger states in the Global North.

<sup>237</sup> In the UK, for example, increasing numbers of people are relying on charitable handouts to survive as a result. Please see: K.A. Garthwaite, P.J. Collins, and C. Bamba, "Food for Thought: An Ethnographic Study of Negotiating Ill Health and Food Insecurity in a UK Foodbank," *Social Science & Medicine*, Vol. 132 (2015): 38-44. See also: Aguilar; UN Human Rights Council, "Report of the Special Rapporteur on Extreme Poverty and Human Rights on his Mission to the United States of America," 4 May 2018. A/HRC/38/33/Add.1. Available at [https://digitallibrary.un.org/record/1629536/files/A\\_HRC\\_38\\_33\\_Add-1-EN.pdf](https://digitallibrary.un.org/record/1629536/files/A_HRC_38_33_Add-1-EN.pdf) [Accessed 19 Sept. 2018].)

<sup>238</sup> Farhana Sultana, "Reflexivity, Positionality and Participatory Ethics: Negotiating Fieldwork Dilemmas in International Research," *ACME: An international E-journal for Critical Geographies*, Vol. 6, No. 3 (2007): 374-85.

‘subjects’ who are differentiated from the researcher along educational status and class lines.<sup>239</sup> Indeed, in the case of this PhD study, the vast majority of my interviewees were highly-educated professionals working in academia or for NGOs, usually at a senior level. Many had public profiles, regularly appearing in the national and international media. In ‘status’ terms, therefore, I felt that in the main I was ‘studying up’.<sup>240</sup>

Nonetheless, in light of the evident problems associated with researchers from the Global North conducting research in the Global South, some researchers have questioned whether this should be avoided. This position has been assumed by a number of scholars over the past few decades. According to Sultana, a concern about positionality has paralysed some feminist scholars into avoiding fieldwork and engaging more in textual analysis.<sup>241</sup> Equally, Nagar has argued that there is an impasse in feminist geography where fears of (mis)representation and (in)authenticity have led to a general withdrawal from fieldwork in the Global South.<sup>242</sup>

There is a strong argument to be made that in certain cases, research that is *about* phenomena in the Global South should be conducted by researchers *from* the Global South. However, much of what happens in individual countries, whether in the Global South or the Global North, including practices of human rights, is of *global* interest. It would be regrettable if research that human rights practitioners could benefit from,

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<sup>239</sup> Thomas Piketty, *Capital in the Twenty-First Century* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2014); Carol D. Ryff, Corey L.M. Keyes, and Diane L. Hughes, "Status Inequalities, Perceived Discrimination, and Eudaimonic Well-Being: Do the Challenges of Minority Life Hone Purpose and Growth?," *Journal of health and Social Behavior*, Vol. 44, No. 3 (2003): 275-91.

<sup>240</sup> Hugh Gusterson, "Studying up Revisited," *PoLAR: Political and Legal Anthropology Review*, Vol. 20, No. 1 (1997): 114-19.

<sup>241</sup> Sultana, "Reflexivity, Positionality and Participatory Ethics: Negotiating Fieldwork Dilemmas in International Research."

<sup>242</sup> Richa Nagar, "Footloose Researchers, 'Traveling' Theories, and the Politics of Transnational Feminist Praxis," *Gender, Place and Culture: A Journal of Feminist Geography*, Vol. 9, No. 2 (2002): 179-86.

wherever in the world they happened to be working, was not conducted because the researchers with an interest in the topic in question came from the wrong part of the world.

In line with Sultana and Nagar's positions, therefore, I believe that instead of abandoning fieldwork in the Global South, we need to abandon the search for objectivity in favour of critically provisional analysis based on the plurality of situated voices and silences. This entails recognising that knowledge is constructed by social actors rather than constituting an objective fact 'out there'; and, moreover, that the knowledge produced in the context of my research processes is embedded within broader social relations and development processes. As such, my findings will always be interpretative and partial.<sup>243</sup>

In terms of the 'insider'/'outsider' divide, I would describe myself as an outsider. I have not worked with the Right to Food Campaign, nor had I worked in India before conducting this research. However, as a social movement activist and NGO worker who has herself experienced some of the difficult dilemmas faced by Right to Food Campaign members – from having to make decisions on whether to adequately consult or to grasp political opportunities before they slid out of view, to being constrained by time limitations, to struggling to make new gains while holding on to existing ones – I found myself experiencing empathy with the positions that the campaign found itself in (an experience normally attributed to 'insiders'). My empathy for the campaign no doubt also lay in my shared commitment to the 'quest' of combatting poverty and inequality. In a sense, therefore, while I primarily identify as an outsider, I arguably

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<sup>243</sup> Ibid. Sultana, "Reflexivity, Positionality and Participatory Ethics: Negotiating Fieldwork Dilemmas in International Research."

had ‘one foot in’ by virtue of my experiences working with social movements and NGOs and my common commitment to addressing poverty and inequality. This position of having one foot inside and one foot outside has been referred to by Eyben as ‘hovering on the threshold’. It is, according to Eyben, a place from which one can be critical but at the same time, constructive.<sup>244</sup>

It is interesting to note that many staunch critics of human rights (based in the Global North) whose analysis does not stand up to scrutiny in light of recent studies of ‘human rights in practice’ rarely comment explicitly on their positionality. It is possible, therefore, that their (sceptical) analyses have been shaped by a lack of empathy for the actors under study as well as a lack of access. At the same time, it became evident during the research process that some of the more positive accounts of the campaign’s work have been produced by campaign ‘insiders’, many of whom have also failed to reflect on their positionality and the (potential) consequences thereof.<sup>245</sup> It is possible that their accounts have been shaped at least in part by their lengthy engagement with and deep commitment to the work of the Right to Food Campaign.

Turning to the text of the PhD itself, I found it difficult to display a constructivist epistemology of the kind advocated by Sultana, Nagar and Eyben.<sup>246</sup> Eyben suggests that one way of doing this is by making one’s reflexive self central to the narrative. Like Mosse, whose work ‘Cultivating Development’<sup>247</sup> is analysed by Eyben, I elected

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<sup>244</sup> R. Eyben, "Hovering on the Threshold: Challenges and Opportunities for Critical and Reflexive Ethnographic Research in Support of International Aid Practice," in *Ethnographic Practice and Public Aid: Methods and Meanings in Development Cooperation*, ed. C. Widmark and S. Hagberg (Uppsala: University of Uppsala, 2009).

<sup>245</sup> For examples, please see: Human Rights Law Network; Jean Drèze, R. Khera, and J. Pudusser, "Food Security: Bihar on the Move," *Economic & Political Weekly*, Vol. 50, No. 34 (2015): 44-52; Reetika Khera, "Democratic Politics and Legal Rights: Employment Guarantee and Food Security in India - Working Paper No. 327," *IEG Working Paper Series* (Delhi: Institute of Economic Growth, University of Delhi, 2013).

<sup>246</sup> Eyben, "Hovering on the Threshold: Challenges and Opportunities for Critical and Reflexive Ethnographic Research in Support of International Aid Practice."

<sup>247</sup> David Mosse, *Cultivating Development: An Ethnography of Aid Policy and Practice* (London: Pluto Press, 2005).

not to do this because of a wish to avoid describing the actions and views of any particular individual.<sup>248</sup> However, as Eyben argues, while challenging, it is not impossible to ensure that the reflexive 'I' is present throughout the text while avoiding casting a critical eye on others and I intend to attempt to develop a more reflexive style of writing in the future. I will also, as Eyben proposes, seek to cultivate the art of 'negative capability'; that is, the ability to hold two or more contradictory ideas in one's head at the same time and value both of them (for example, where campaign members had different perspectives on an aspect of the campaign's work, I could have stressed the validity and relevance of all of the ideas that had been put forward more effectively). As well as addressing, at least to some extent, the risk of misrepresentation, by privileging experiential knowledge I may also have had a greater chance of triggering a process of similar critical reflection among the other actors involved in the narrative.<sup>249</sup>

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<sup>248</sup> Eyben, "Hovering on the Threshold: Challenges and Opportunities for Critical and Reflexive Ethnographic Research in Support of International Aid Practice."

<sup>249</sup> As noted by Eyben. See *ibid.*

### 3.3.3. The Research Questions and their Evolution

It has been noted that '[s]ocial science textbooks on methodology usually provide an idealized conceptualization of how social research ought to be designed and executed'.<sup>250</sup> In this regard, Becker has remarked that '[n]o matter how carefully one plans in advance, research is designed in the course of its execution'.<sup>251</sup> This was certainly the case in respect of this study. As noted above, the original objective of the study was to examine how the Right to Food Campaign conceptualised the right to food. Upon commencing the first set of interviews, however, it quickly became clear that a variety of conceptions of the right to food were in circulation among Right to Food Campaign members (and wider civil society in India); and that while some of these conceptions overcame key criticisms of the normative content of human rights, others did not. As a result, the focus of the thesis expanded to include an examination of the genesis of the various conceptions, how they were shaped, and how they developed over time. As the fieldwork progressed, it also became clear that the more 'radical' conceptions of the right to food – i.e. those that related to productive resources and international trade – had not made it into the 'right to food act' that was passed into law in 2013. The reasons why the right to food act came to contain the content that it did therefore became an additional focus area. By the end of the first field visit (August to September 2016), the themes that I intended to investigate had expanded to include the following:

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<sup>250</sup> William B. Shaffir and Robert A. Stebbins, "Introduction," in *Experiencing Fieldwork - an inside View of Qualitative Research* (Newbury Park: Sage Publications, 1991). 22.

<sup>251</sup> Howard S. Becker, "Review of Sociologists at Work," *American Sociological Review*, Vol. 30 (1965): 602-03.



1. How did members of the Right to Food Campaign/wider Indian civil society understand the right to food?
2. What shaped their understandings of the right to food?
3. What demands did members of the Right to Food Campaign make of the government in respect of the content of the proposed right to food statute?
4. What strategies did members of the Right to Food Campaign use to secure the inclusion of their demands in the statute?
5. Which strategies were effective?
6. What factors shaped the content of the Act that was eventually passed in 2013?

#### 3.3.4. Data Collection

##### Documentation

Before the first field visit, I reviewed all of the available online documentation that was relevant to my original research question; that is: ‘How did members of the Right to Food Campaign and wider Indian civil society understand the right to food?’ The available materials included:

- Articles by Right to Food Campaign members in the print media;
- Interviews with Right to Food Campaign members in the broadcast media (I transcribed these);
- Right to Food Campaign ‘statements of demands’;
- Right to Food Campaign ‘critiques of draft government legislation’; and
- Minutes of Right to Food Campaign meetings (available on the campaign’s website).

The decision to focus my documentation review solely on the material that was directly relevant to my original research question turned out to be short-sighted. As noted, during the first field visit, the nature of my enquiry evolved and expanded. During the first field visit, I therefore found myself struggling to review a large number of additional primary documents – such as government position papers, government consultation documents, draft legislative bills and parliamentary records – in addition to:

- Arranging interviews;
- Transcribing and conducting a preliminary analysis of the interviews; and
- Arranging travel to different regions/states to meet with prospective interviewees.

This proved to be a very heavy workload and impeded my ability to work effectively. In future, prior to commencing a field trip I would review as much documentation as possible that was relevant to the work of the actors/initiatives under study with the expectation that my research questions would develop and evolve during the fieldwork.

**Table 1: Schedule of Interviews**

<b>Medium</b>	<b>States visited<sup>252</sup></b>	<b>Interviews</b>
Field visit 1: August – September 2014	4 (including Delhi)	17
Field visit 2: July 2016	3 (including Delhi)	17
Telephone	n/a	3
<b>Total</b>	<b>6</b>	<b>37</b>

In terms of the interviews, my primary targets were members of the Right to Food Campaign and other civil society actors who had engaged with the Right to Food Campaign (i.e. either by supporting their work or by critiquing it, for example, in the press or on social media). It would also have been useful to be able to interview government officials and parliamentarians; however, it did not prove possible to gain access to these groups.

Securing access to key informants can be a challenge for researchers, especially doctoral and Masters (i.e. student) researchers. Fundamentally, securing access ‘involves gaining permission to conduct research in a particular social setting [and] involves negotiation and renegotiation’.<sup>253</sup> As Lofland has noted, in terms of securing access, the researcher is more likely to be successful if she/he enters negotiations with connections.<sup>254</sup> In light of this, wherever possible, I sought introductions from

<sup>252</sup> I conducted interviews in Delhi on both field visits, so I visited six states in total.

<sup>253</sup> Shaffir and Stebbins, "Getting In." 25.

<sup>254</sup> John Lofland and Lyn Lofland, *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis* (Belmond, California: Wadsworth, 1995).

professional and student contacts (especially from the University of Essex's Human Rights Centre) in order to make contact with potential interviewees or intermediaries (gatekeepers). I was able to secure 18 interviews in this manner. I also 'cold called' a number of potential interviewees (by emailing, tweeting or LinkedIn messaging) and received a positive response more than 50 percent of the time. This indicates that, contrary to Shaffir and Stebbins' contention, 'the sudden presence of a stranger' does not necessarily 'raise[...] suspicions as motives are questioned'.<sup>255</sup> Nor do all research subjects wish to know what they stand to gain by cooperating.<sup>256</sup> Indeed, several interviewees appeared to value the opportunity to reflect on their experiences through discussion with an outsider and seemed pleased that researchers were interested in the work they were doing. Finally, in order to secure access, I also employed the 'snowballing' technique as described by Berg.<sup>257</sup>

As detailed in Table 1 above, I interviewed 37 individuals on my first and second field visits and by telephone from the UK. After the initial field visit, I conducted a preliminary analysis of the interview material and it became clear that the research project would benefit greatly from follow-up interviews. I therefore arranged several telephone interviews. However, I found conducting telephone interviews to be extremely difficult. It seemed to be much harder to establish a rapport and get beyond the 'official' Right to Food Campaign narrative when interviewing informants by telephone. I therefore decided to conduct an additional field visit in 2016. In total, I conducted interviews in six states in India. These included some particularly

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<sup>255</sup> Shaffir and Stebbins, "Getting In." 26.

<sup>256</sup> Rosalie Wax, "Field Methods and Techniques: Reciprocity as a Field Technique," *Human Organization*, Vol. 11, No. 3 (1952): 34-37. Cited in William B. Shaffir and Robert A. Stebbins, eds., *Experiencing Fieldwork - an inside View of Qualitative Research* (Newbury Park: Sage Publications, 1991).

<sup>257</sup> L. Bruce Berg, *Qualitative Research Methods for the Social Sciences* (Boston: Pearson Education, 2003).

impoverished states and some more wealthy ones. After much consideration, I decided not to list the states visited in order to protect the anonymity of my interviewees. Please see Section 3.4 for an explanation of this decision.

In spite of the 'paucity of accounts describing the less happy moments of fieldwork, such moments are likely to be present in most, if not all, field studies'.<sup>258</sup> The 'less happy moments' that I experienced related primarily to the practical matter of locating my interview sites (mainly offices, but occasionally homes or cafes). Before travelling to India, I asked two Indian acquaintances about the safest and most reliable means of transportation in the localities that I intended to visit and (with the exception of Delhi which has an underground metro), I was informed that three-wheel rickshaws were safe, reliable and cost-effective and that their drivers usually spoke English. Unfortunately, it turned out that the vast majority of the drivers of the rickshaws that I used only spoke sufficient English to transport non-Hindi speakers to famous tourist sites and not to offices or cafes that were not well known, even if the addresses were written out for the driver in Hindi (presumably due to the high rates of illiteracy in India). As a result, I missed one interview and was late for several others which was both unprofessional and embarrassing.

I eventually switched my mode of transport to taxis, finding taxi companies that were able to provide English-speaking drivers. While I was henceforce able to locate my interview sites with relative ease and arrive on time, this resulted in me going over my budget for the trip as taxis are considerably more expensive than rickshaws. From this

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<sup>258</sup> Shaffir and Stebbins, "Introduction." 2.

experience, I learned that in advance of undertaking a research trip to an unfamiliar country or locality, it may make more sense to seek advice from individuals with a similar skill set to me (i.e. non-Indian-language-speaking foreign researchers rather than Hindi-speaking Indian nationals).

**Table 2: Categories of Interviewee**

Categories of Interviewee	No.
'Influential' and 'high profile' leaders of the Right to Food Campaign as identified by a) the perceptions of other interviewees; b) their access to government decision-makers (as self-reported); c) the quantity of their outputs in the national and international print and broadcast media. (Some of these 'influential' and 'high profile' leaders of the campaign were also 'Steering Group' members).	5
Steering Group members (made up mainly of representatives of national and state-level NGOs or networks of NGOs, although several representatives of social movements and trade unions were also represented). The Steering Group is tasked with 'provid[ing] direction to the Campaign's activities' with the guidance of 'the mandate and policies laid out the annual convention'. <sup>259</sup>	11
Other active Right to Food Campaign activists	11

<sup>259</sup> Please see the Right to Food Campaign's 'Collective Statement'. Available at: [http://www.righottofoodindia.org/data/rtf\\_campaign\\_collective\\_statement09.pdf](http://www.righottofoodindia.org/data/rtf_campaign_collective_statement09.pdf) [accessed 1 Sept. 2015].

<p>Other members of civil society:</p> <ul style="list-style-type: none"> <li>• The leader of an Indian farmers' movement;</li> <li>• NGO activists who work on agriculture/production with Indian farmers' movements and/or (organised and unorganised) small producers and landless people; and</li> <li>• A Dalit rights activist who participates in Right to Food Campaign actions, but does not consider himself to be a member of the campaign.</li> </ul>	10
<b>Total</b>	<b>37</b>

Prior to the first field trip, I devised a set of semi-structured interview questions accompanied by open-ended 'prompts' as described by Berg.<sup>260</sup> 'Essential questions', which concerned the central focus of the study and were aimed at eliciting specific desired information were scattered throughout the interview schedule. As per Berg's prescriptions I also intended to ask 'extra questions' roughly equivalent to the 'essential questions' but worded differently in order to check the reliability of the responses. 'Throw away' questions of a general nature were to be asked at the start of the interview in order to develop a rapport with the interviewee. Attention was also paid to the wording and the sequencing of the questions in order to avoid influencing the responses given. I conducted practice interviews with doctoral research colleagues in an attempt to identify badly worded questions and to assess how effectively the interviews would work.

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<sup>260</sup> Berg, *Qualitative Research Methods for the Social Sciences*.

Little of this preparation proved to be useful upon commencing the fieldwork. The use of ‘extra questions’ merely caused confusion, with several interviewees stating that they thought that they had already responded to that particular question, and querying whether I had understood their response. In addition, the goal of avoiding influencing the interviewees’ responses by using open-ended questions proved to be problematic in certain instances. For example, I discovered early on that the Right to Food Campaign had decided to centre their claims in respect of the content of the proposed statute on social protection measures (also referred to as ‘individual entitlements’), while at the same time continuing to refer to what they called their ‘structural demands’ in their public statements (to avoid giving the impression that the right to food was tantamount to social protection provision). However, after I discovered this, when I asked the open-ended question: ‘*what demands did you make of the government in respect of the content of the right to food act?*’ to one interviewee, I received the ‘official narrative’, which was that the campaign had tried to secure both the social protection measures and the ‘structural demands’, but that the government had rejected the latter. After receiving the ‘official narrative’ I found it difficult to press the interviewee further without making it obvious that I doubted the veracity of her account. After this experience, I decided to ask the interviewees directly why they had decided to centre their demands on social protection measures. I believe that had they disagreed with this interpretation of events, they would have said so as on several occasions interviewees politely but bluntly told me that my interpretation of X, Y or Z was simply incorrect. This experience made me reflect on the tendency of certain research methods guides to assume that all interviewees are the same. The social justice/human rights activists that I interviewed were quick to ‘correct’ my analysis where they felt that I had misunderstood an issue and, therefore, it seems unlikely that



they would have been swayed to make statements that they did not believe in by the wording or order of my questions; if anything, the greater challenge lay in ‘unpicking’ the ‘official narrative’ of the campaign.<sup>261</sup>

In addition to the above challenges, as my research questions grew, I found the ‘list of semi-structured interview questions’ format increasingly difficult to use, especially as interviewees tended to jump from topic to topic. As Barbour has noted, it can be intimidating for the novice interviewer when respondents skip from one topic to another as this presents a challenge in ensuring that all of the questions on the schedule are covered. This was something that I experienced.<sup>262</sup> In light of this, I switched from using a list of semi-structured interview questions to relying on a series of ‘key themes’ containing different topics, with each theme laid out on a single piece of paper. I could then switch between the different sheets of paper as the interviewee jumped to a new theme, mark off each issue as it was addressed, while at the same time circling important concerns that I wanted to return to.

By the end of the second fieldwork visit the key themes included:

- Conceptions of the right to food
- The debates that ensued around the various conceptions of the right to food
- The Right to Food Campaign’s demands of the government
- The main strategies employed by the Right to Food Campaign
- The main challenges faced by the campaign

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<sup>261</sup> It is not uncommon for activist groups to have an ‘official’ narrative of themselves and their activities. For an example, please see Claeys, *Human Rights and the Food Sovereignty Movement: Reclaiming Control*. 9.

<sup>262</sup> Rosaline Barbour, *Introducing Qualitative Research: A Student Guide to the Craft of Doing Qualitative Research* (London: Sage Publications, 2009).

- The law-making/legalisation process
- The impact of the campaign's work, key achievements and possible losses

An illustration of a piece of paper containing 'theme 4' topics is provided in Table 2 below.

**Table 3: Example of 'Theme 4' Interview Topics**

<p><b>Theme 4: Strategies</b></p> <p><b>Interview Topics</b></p> <p><u>Actions:</u></p> <p>Lobbying – Targets? Rationale? Who involved? Where? Effective? Why use? Why not use?</p> <p><del>Demonstrations/Rallies – Targets? Rationale? Who involved? Where? Effective? Why use? Why not use?</del></p> <p>Media work – Targets? Rationale? Who involved? Where? Effective? Why use? Why not use?</p> <p>Sitting on the NAC - Rationale? Who involved? Where? Effective? Why use? Why not use?</p> <p><u>Arguments:</u></p> <p>What arguments did you use? Who with? Why? Why not? Effectiveness?</p> <p><del>HRL? Why? Why not? Who with? Effectiveness?</del></p> <p>Domestic HRL? Why? Why not? Who with? Effectiveness?</p>
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International comparisons on hunger indicators? Why? Why not? Who with?

Effectiveness?

Ethical arguments?

Other?

Campaign cohesion:

~~Agreement over use of strategies? Disagreement? Why?~~

Effectiveness overall:

~~What worked? Why? Why not? What would you change?~~

Informed consent was obtained for all of the interviews (please see Section 3.4) and all of the interviews were recorded and transcribed (all of the interviewees gave their permission to be recorded).

As Barbour has noted, in terms of interview techniques, methods guides normally focus on ‘how to ask a question properly’, even though it is also important to listen effectively, make a list of pre-determined questions ‘appear fresh’ and establish a rapport. I was expecting to find conducting the interviews relatively straightforward as I have interviewed a large number of research informants for NGO and UN studies. However, I found that conducting the interviews for my doctoral thesis was considerably more difficult, in part because I was – unlike during my NGO/UN research projects – unfamiliar with the socio-political and cultural context, but mainly because my doctoral study was more complex, requiring me to simultaneously: *actively listen* to the interviewees; rapidly *analyse* the information provided; reflect on the relevance of the pertinent *theoretical literature* to the interviewee’s responses; formulate an appropriate response (i.e. decide whether to stay silent and just use body

language to elicit further information, express empathy because the response involved the retelling of human suffering or ask a follow up question/use a ‘prompt’).

Researchers often invoke the concept of ‘saturation’ to denote the point at which they consider they have exhausted their data and the potential to develop new categories.<sup>263</sup> This concept also applies to the data collection stage, however.<sup>264</sup> By the end of the second fieldwork trip I felt that little new information was emerging during the interviews. However, right at the end of the second fieldwork trip I interviewed a Dalit rights activist who worked for a member organisation of the Right to Food Campaign and this informant provided a new interpretation of particular decisions and events. Frustratingly, at this stage, due to time limitations I was unable to explore this informant’s perspectives further through additional interviews. However, I included the interpretations of this informant in the analysis as appropriate and hopefully the issues that he raised can be investigated further during future research. This was a valuable learning experience for me. During the fieldwork I approached potential interviewees in a fairly random order, focusing more on ensuring geographic spread than on diversity in terms of the social composition of the informants. In hindsight I should have tried to categorise potential interviewees according to, for example, socio-economic and identity-based statuses, and attempted to ensure that the views of different groups were included.

### 3.3.5. Data Analysis

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<sup>263</sup> Ibid.

<sup>264</sup> Berg, *Qualitative Research Methods for the Social Sciences*.

### The Validity of the Documents

Wharton defines documentary analysis as the detailed examination of documents produced across a wide range of social practices, taking a wide variety of forms from the written word to the visual image.<sup>265</sup> As MacDonald has noted, although there may be a tendency to think of documents as being 'objective' they are socially produced and therefore must be analysed by questioning their authenticity, credibility and representativeness.<sup>266</sup> Careful consideration needs to be given to the position and intention of the writer: i.e. a researcher must question what the writer is trying to achieve by producing the document and how might this affect what is written.<sup>267</sup> This study analysed several hundred documents. Two examples of my approach to assessing the validity of these documents are provided here:

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<sup>265</sup> Chris Wharton, "Document Analysis," in *The Sage Dictionary of Social Research Methods*, ed. Victor Jupp (London: Sage, 2006). in Jamie Harding, *Qualitative Data Analysis from Start to Finish* (London: Sage Publications, 2013).

<sup>266</sup> Keith MacDonald, "Using Documents," in *Researching Social Life*, ed. Nigel Gilbert (London: Sage, 2008).

<sup>267</sup> *Ibid.*

- Written reflections by Right to Food Campaign members on their experiences working with the campaign i.e. in published works:<sup>268</sup> The accounts provided in these reflections may have been subjective or aimed at presenting a particular narrative. Therefore, these accounts were, where possible, cross-referenced with other documentary and/or interview material. Where cross-referencing was not possible, the source of the observation was made explicit i.e. '*According to the written reflections of A...*'. Counter-interpretations were also provided where possible i.e. '*However, according to B, the more important factor was...*'
- Right to Food Campaign materials such as 'statements of demands', 'position papers', and 'model right to food statutes': Even documents such as these could not necessarily be taken at face value. For example, it was apparent from a close reading of some of the documents that the social-protection-related demands were laid out in significantly more detail than the *structural change* demands. This was followed up during the interviews, leading some interviewees to explain that the campaign was not really trying to secure the inclusion of the *structural change* demands in the right to food statute; they were referred to in the campaign's documents in order to a) placate Right to Food Campaign members who wanted the *structural change* demands to be included in the Act and b) to avoid giving the impression that the right to food was tantamount to social protection.

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<sup>268</sup> Examples include: Human Rights Law Network, *Right to Food*; Guha-Khasnobis and Vivek, "The Rights-Based Approach to Development: Lessons from the Right to Food Movement in India."

### Transcription

All of the interviews were recorded (with the permission of the interviewees) and transcribed prior to analysis. The positions of the interviewees within the campaign and, where possible, their social backgrounds (i.e. educational attainment levels, professions) were noted.

### Framework Analysis

Elements of the research conducted for this thesis were aimed at nomothetic generalisation i.e. questions such as: how did Right to Food Campaign members understand the right to food? What strategies did Right to Food Campaign members believe were the most effective and why? These dimensions of the research were analysed using 'framework analysis'. Other elements of the research aimed to a) reveal the evolution of the strategies that were central to the Right to Food Campaign's struggle for a right to food statute and b) evaluate the reasons why the right to food act was enacted in the way that it was. These elements of the research were analysed using 'process tracing'.

Framework analysis as developed by Ritchie and Spencer was used to sift, chart and sort the data.<sup>269</sup> This involved a number of phases. First, I familiarised myself with the documentary material and the transcripts by reading and rereading them in order to gain an overview of the collected data and jot down possible themes (this was developed into a 'provisional coding frame'). Through this process I was able to identify several

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<sup>269</sup> Jane Ritchie and Liz Spencer, "Qualitative Data Analysis for Applied Policy Research," in *The Qualitative Researcher's Companion*, ed. Michael A. Huberman and Matthew B. Miles (Thousand Oaks, California: Sage, 2002).

key themes. As the qualitative research endeavour is an iterative process, I refined my provisional coding frame as the analysis proceeded (by reading and rereading the documents and the interview transcripts). As Barbour has noted, sometimes issues don't 'jump out' at you until someone says something particularly articulately or vehemently, although this does not mean that this concern is not present in other transcripts/documentary materials which therefore need to be reanalysed.<sup>270</sup> On the basis of the 'provisional coding frame', I identified a thematic framework, ensuring that the *a priori* themes did not prevent me from allowing the data to dictate the key issues identified. The thematic framework (which was, as with the coding frame, refined throughout the data analysis process) was then used to filter and classify the data. Indexing – that is, the identification of sections of the data that correspond to a particular theme – was then undertaken using the software Nvivo. (The University of Essex's *Proficio* programme provided a two-day training course on how to use Nvivo which was extremely helpful). The data were then placed in charts with headings and subheadings that were constructed during the thematic framework identification stage (this stage is called 'charting'). The final stage, 'mapping and interpretation', involved the analysis of the key characteristics as laid out in the charts.

Ritchie and Spencer's approach to framework analysis places emphasis on the need to provide explanation and, in particular, to use contradictions and exceptions to analytic advantage. Their insights proved to be useful during the analysis process. From time to time the information that I received from interviewees was contradictory. In these instances, it became necessary to attempt to 'read between the lines' and come to an

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<sup>270</sup> Barbour, *Introducing Qualitative Research: A Student Guide to the Craft of Doing Qualitative Research*.



interpretation or a set of possible interpretations. For example, during the first fieldwork visit two interviewees remarked that they felt that they had not worked hard enough to secure the inclusion of a particular campaign ‘demand’ in the right to food statute.<sup>271</sup> They were unable to or decided not to elaborate on why they believed this to be the case. I was able to probe this issue further during the second fieldwork visit which led to the following finding: the two Right to Food Campaign members who were appointed to a key legislative drafting body (the National Advisory Council) were ambivalent about the campaign ‘demand’ referred to by the interviewees mentioned above and, therefore, they did not use their privileged ‘insider’ position to advocate for this demand in spite of the official position of the Right to Food Campaign. This appears to be what the two interviewees referred to above were implying, but somewhat opaquely, perhaps because they did not wish to criticise their colleagues.

A second contradiction lay in the fact that several interviewees seemed unable to provide an account as to why the Right to Food Campaign was unable to simultaneously make ‘social protection’ and *structural change* demands. Further investigation led to an interpretation that some interviewees may have been reluctant to put forward to an outsider: that the Right to Food Campaign simply did not have the capacity, expertise or the time to formulate concrete *structural change* claims that could realistically be included in a right to food statute.

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<sup>271</sup> The ‘demand’ in question was to secure a provision in the act that obligated the government to procure all of the food for the schemes that the act provided for from India’s small and medium farmers at a remunerative price (referred to as the ‘minimum support price’ or MSP). This ‘demand’ is explained further in Chapter 4, Section 4.2.2.

Silverman has stressed the value of simple counting in order to avoid anecdotalism. He makes the point that systematic attention to who is saying what and in what context may remove nagging doubts about the accuracy of researchers' interpretations of the data, thus strengthening the rigour of the work.<sup>272</sup> In light of this insight, I was careful to note the number of interviewees who made a particular point, agreed with a particular interpretation of events, recounted events in a similar way and so on. When different interpretations emerged, I was careful to make this clear, for example, by stating: *'however, one interviewee, a Dalit rights activist, provided the following alternative explanation...'* or *'that being said, two activists from the south of India disagreed with this explanation, and suggested that...'*

### Process Tracing

As noted above, some dimensions of study were aimed at nomothetic generalisation. However, other elements aimed to make sense of the unfolding of events, and 'cause' and 'effect'-like phenomena; in particular, the way in which the Right to Food Campaign's strategies evolved, the reasons why the right to food act was enacted and the reasons why the act was enacted with the content that it had. Making 'causal' claims in the social sciences is, of course, a difficult task. While it is easy to identify a correlation between two or more events – for example, an Amnesty International campaign and the release of a political prisoner – it is difficult to determine whether there is a causal connection. The prisoner could have been released as a result of an entirely unrelated factor such as a state's need to ease domestic unrest. The difficulty associated with determining which of a number of possible factors is responsible for an

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<sup>272</sup> D. Silverman, *Interpreting Qualitative Data: Methods of Analyzing Talk, Text and Interaction* (London: Sage, 1993). Cited in Barbour, *Introducing Qualitative Research: A Student Guide to the Craft of Doing Qualitative Research*.

observed event is referred to as the ‘attribution problem’.<sup>273</sup> The failsafe way to generate causal evidence which overcomes the attribution problem is via randomised experiments, as these enable researchers to control and manipulate hypothesised causes of phenomena to determine the specific effect(s) that they have on other phenomena.<sup>274</sup> Conducting randomised experiments is, however, often unfeasible – or, indeed, unethical<sup>275</sup> – in social settings and researchers seeking to examine causal relationships often use other methods such as regression analysis in quantitative research and comparative historical analysis or process tracing in qualitative research.<sup>276</sup>

This study used process tracing, a qualitative data analysis method developed in the 1970s, to make sense of the reasons why the right to food act was enacted, and why it was enacted in the form that it was. Process tracing involves the systematic examination of data – such as government statements, press reports and transcripts of interviews – to see whether a causal relationship hypothesised is evident in the sequence of events. Importantly, process tracing requires researchers to ‘[c]ast the net widely for alternative explanations’, thereby assuring the reader that the attribution problem has been addressed (or at least tackled). Social scientists and historians have, of course, traced social processes with the aim of attempting to gain an understanding of causal relationships for hundreds of years. What is distinctive about process tracing as a social

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<sup>273</sup> Laura R Novick, Angela Fratianne, and Patricia W Cheng, "Knowledge-Based Assumptions in Causal Attribution," *Social Cognition*, Vol. 10, No. 3 (1992): 299-333.

<sup>274</sup> John Antonakis et al., "On Making Causal Claims: A Review and Recommendations," *The Leadership Quarterly*, Vol. 21, No. 6 (2010): 1086-120. 1086.

<sup>275</sup> Nosisana Nama and Leslie Swartz, "Ethical and Social Dilemmas in Community-Based Controlled Trials in Situations of Poverty: A View from a South African Project," *Journal of Community and Applied Social Psychology*, Vol. 12, No. 4 (2002): 286-97.

<sup>276</sup> Dietrich Rueschemeyer, "Strategies of Causal Assessment in Comparative Historical Analysis," in *Comparative Historical Analysis in the Social Sciences*, ed. James Mahoney and Dietrich Rueschemeyer (Cambridge: Cambridge University Press, 2003). Andrew Bennett and Jeffrey T. Checkel, "Process Tracing: From Philosophical Roots to Best Practices (SWP 21)," *Simons Working Paper Series in Security and Development* (Vancouver: Simon Fraser University, 2012).

science research method is its systematic and explicit approach to the analysis of evidence.<sup>277</sup> The starting point of process tracing is to describe individual ‘static’ events or situations,<sup>278</sup> or in other words, to take ‘snapshots’ at a series of significant moments.<sup>279</sup> The identification of key steps in a process facilitates a useful analysis of change and sequence.<sup>280</sup> Once a sequence of events has been documented it then becomes possible to explore the causal ideas embedded in the narrative and consider the kinds of evidence that may confirm or disconfirm these ideas. This allows the researcher to ‘connect the dots’ and try to make sense of what happened.<sup>281</sup>

Process tracing was used in this study to analyse the extent to which the Right to Food Campaign could be considered responsible for the enactment of the statute, which of their strategies were effective and what other factors contributed to the enactment of the statute. For clarity, I first used the available documentary evidence and interview transcripts to construct a detailed timeline of events from which I could pull out the ‘significant moments’. As noted above, the attribution problem had to be adequately dealt with: it could not be assumed that because the right to food act was passed after the Right to Food Campaign’s campaign for it that the campaign was wholly or even partly responsible for its enactment. A third factor could have played a more significant role. To illustrate this point, although the enactment of India’s National Rural Employment Guarantee Act of 2005 is often attributed solely to the work of Indian civil society, a study of the social processes leading to the creation of the act found that

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<sup>277</sup> Andrew Bennett and Alexander L. George, "Process Tracing in Case Study Research" (paper presented at the MacArthur Foundation Workshop on Case Study Methods, Cambridge, Massachusetts, 17-18 October 1997). 22

<sup>278</sup> David Collier, "Understanding Process Tracing," *PS: Political Science & Politics*, Vol. 44, No. 4 (2011): 823-30.

<sup>279</sup> *Ibid.*

<sup>280</sup> *Ibid.*

<sup>281</sup> Bennett and George, "Process Tracing in Case Study Research."

the presence of sympathetic left-wing parties in the governing coalition was also a key contributing factor.<sup>282</sup>

### 3.4. Ethics

This section addresses issues of harm, consent, privacy and the confidentiality of data. These are, according to Punch, the main concerns of research ethics.<sup>283</sup> As Liamputtong notes, ethical responsibility is of particular concern when research involves participants who may have been exploited or who are marginalised or particularly vulnerable.<sup>284</sup> The present Indian government has cracked down on civil society freedoms over the past few years and some of this study's interviewees may be at risk of government harassment.<sup>285</sup> Indeed, media reports indicate that numerous members of the Right to Food Campaign (none of whom were interviewed for this study) are harassed by the authorities from time to time.<sup>286</sup> In order to minimise the risks to informants, I emphasised at all stages of the research that participation was entirely voluntary. I also emphasised the participant's right to: withdraw from the study at any time up until the submission of the thesis; refrain from responding to any of the questions asked; and terminate the interview at any time. The purpose of the study was fully explained to all

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<sup>282</sup> Khera, "Democratic Politics and Legal Rights: Employment Guarantee and Food Security in India - Working Paper No. 327."

<sup>283</sup> M. Punch, "Politics and Ethics in Qualitative Research," in *Handbook of Qualitative Research*, ed. N.K. Denzin and Y.S. Lincoln (Thousand Oaks, California: Sage, 1994).

<sup>284</sup> Pranee Liamputtong, *Performing Qualitative Cross-Cultural Research* (Cambridge: Cambridge University Press, 2010).

<sup>285</sup> David Kode and Mathew Jacob, "India: Democracy Threatened by Growing Attacks on Civil Society," (s.l.: CIVICUS, 2017).

<sup>286</sup> For example, leading Right to Food Campaign activists Madhuri Krishnaswamy and Kavitha Srivastava have both been subject to police harassment. Please see: <https://iamc.com/news/inpress/2011/10/police-raid-at-the-house-of-kavita-srivastava-condemned-oct-4-2011-twocircles-net/> [accessed: 3 Mar. 2017] and <https://timesofindia.indiatimes.com/Activist-and-head-of-the-jagrit-dalit-advansi-sangthan-madhuri-Behan-arrested-and-sent-to-Khargonprisonfor-14-days-in-a-caseregisteredagainsther-in-2008-when-she-had-led-the-agitation-fordemanding-safe-maternity-rights-for-women-in-the-district-/articleshow/20104799.cms?> [accessed: 3 Mar. 2017].

interviewees and informed consent was obtained (all of the interviewees were happy to sign 'informed consent forms' and many seemed familiar with this process).<sup>287</sup> Methods guides tend to instruct researchers to outline potential risks to research participants prior to obtaining informed consent. This did not make sense in the context of this study as the interviewees would have been far more aware of any risks associated with participation than the researcher. I therefore asked the interviewees whether they felt there were any risks associated with participating in the study and trusted their judgement when they assured me either that there were no risks or that they were able to manage any risks that might arise. That being said, the one risk that I *was* aware of did influence the direction of the study. Recently, Indian NGOs that are in receipt of funding from foreign donors have been targeted for closure by the Indian government.<sup>288</sup> In light of this, although there were several interesting research angles that related to access to 'foreign funding', I elected not to pursue them in light of the potential risks to the informants, their NGOs, and the fact that I could not be sure that the potential benefits of pursuing those angles outweighed the potential risks.

To ensure confidentiality, each interviewee was asked to elect whether to remain nameless in the study or to be quoted by name and/or job title. The vast majority of the interviewees (around 80 percent) were happy to be quoted by name. Citing the interviewees by name would have presented certain advantages, especially in respect of the interviewees who had public profiles as the material in their interviews could have been presented in conjunction with their public statements (i.e. their news articles, media appearances etc.). It may also have made the findings seem more 'concrete'.

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<sup>287</sup> Solomon R. Benatar and Peter A. Singer, "A New Look at International Research Ethics," *BMJ: British Medical Journal*, Vol. 321, No. 7264 (2000): 824-26. 824.

<sup>288</sup> Kode and Jacob, "India: Democracy Threatened by Growing Attacks on Civil Society."

However, much of the information provided during the interviews was potentially sensitive from an ‘*intra-civil society*’ perspective. For example, among other things, the interview material:

- Revealed tensions within the Right to Food Campaign and between the Right to Food Campaign and wider civil society;
- Suggested that class/caste biases of Right to Food Campaign members shaped the decisions that were taken;
- Contradicted the ‘official narrative’ of the campaign that the decisions within the Right to Food Campaign were democratic.

Denzin has remarked that ‘[s]pecial care has to be taken when writing about thick family relations, parents, friends, and lovers. Taking a story back to an intimate can cause harm. It can destroy a relationship’.<sup>289</sup> However, this can also be the case in respect of other types of relationships including professional ones. My own experience of working with NGOs in Palestine demonstrated how easy it is for civil society disagreements to evolve into inter-organisational ‘feuds’ which undermine the capacity of the actors involved to achieve their objectives. With this experience in mind, after careful consideration of the pros and cons of citing interviewees by name, I decided to anonymise all of the interviewees using pseudonyms, except for one interviewee whose contributions were not particularly sensitive and were significantly more enlightening when presented in conjunction with his published reflections. In order maintain anonymity, it unfortunately became necessary to omit information about the

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<sup>289</sup> Norman K. Denzin, *The Qualitative Manifesto - A Call to Arms* (California: Left Coast Press, 2010). 82.

state/region in which the interviewee was based as many of the interviewees were either 'leading members of the campaign' or 'steering group members' and there are only two to three 'leading members of the campaign'/'steering group members' based in each state; listing the state would therefore almost certainly have identified the informants.

Ethical approval for this project from the University of Essex was, of course, obtained in advance of commencing the fieldwork.

### **3.5. Limitations**

The main limitation of this study relates to my inability to speak and read Hindi. Most of the introductory letters that I sent to potential interviewees were in English. This will likely have limited my pool of respondents to the middle and upper classes and castes, as it tends to be this demographic who speak English. I did send some Hindi-language introductory letters to potential interviewees who I understood only spoke Hindi (translated by an acquaintance), but I failed to receive a response to these letters.<sup>290</sup> Two interviewees (leading members of the Right to Food Campaign) were kind enough to arrange interviews with some of their colleagues, for example, community activists and social workers who were involved in assisting rights claimants to access their legal entitlements. These interviewees did not speak English and the interviews were conducted in Hindi with (informal) interpretation provided by another staff member from the organisation in question. The information provided by these interviewees was very valuable; however, I am aware that these interviewees may not have felt able to speak frankly as the setting did not guarantee anonymity. Due to my language

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<sup>290</sup> Shaffir and Stebbins, *Experiencing Fieldwork - an inside View of Qualitative Research*.25.



limitations (and inability to hire a fixer/translator due to financial constraints), I was also unable to interview any of the rights claimants. It would have been particularly useful to interview rights claimants who attended demonstrations and rallies in support of the proposed right to food act to gain an understanding of their experiences and motivations. I was also unable to meaningfully engage in ‘participant observation’. For example, I was invited to observe a rally in Delhi which I attended. This was instructive in some respects; in particular, it was noticeable that the speakers were dressed in smart saris or smart so-called ‘western’ clothes while the ‘audience’ (i.e. the bulk of the demonstrators) were dressed in poor quality, and sometimes even ragged clothes. However, due to the language barrier, I was unable to engage with the participants in the rally or understand what the speakers were saying.

### **3.6. Summary**

This chapter of the thesis aimed to provide a reflective account of the research process, including an account of the main challenges, learning points and limitations faced by the researcher. Chapters 4 to 7 turn to the substantive analysis, commencing with a discussion of the way in which the Right to Food Campaign and broader Indian civil society understood the right to food.

## Chapter 4: Conceptualising the Right to Food in India

### 4.1. Introduction

The substantive contributions of this thesis are laid out in chapters 4 to 7. To recap, the overarching objective of this thesis is as follows: to offer a fresh perspective on the potential and limitations of human rights as a tool with which to address the needs of the poor by *studying the social processes involved in the creation of human rights law*. As discussed in Chapter 1, to date most assessments of the potential and limitations of human rights have been based on an analysis of *extant human rights law*;<sup>291</sup> an approach which is limiting as it offers little insight into whether human rights law could, in the future, develop or ‘expand’ to overcome the limitations presently associated with it. The law which is the focus of this study is, as noted earlier, India’s National Food Security Act of 2013, a piece of statutory legislation which is more commonly referred to as the ‘right to food act’.

Chapter 4 analyses what could be thought of as the ‘conceptualisation stage’ of the human rights law-creation process; that is, the stage during which social actors construct their understandings of what a pre- or non-legalised human right means. The creation of India’s right to food act can be divided into three stages. In addition to the ‘conceptualisation stage’, there is the ‘claim-formulation stage’<sup>292</sup> (analysed in Chapter 5) and the ‘legalisation stage’<sup>293</sup> (analysed in Chapter 7). Chapter 6, meanwhile,

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<sup>291</sup> Although, as noted, some such assessments are based on philosophical thought. For example, please see: Robinson, "The Limits of a Rights-Based Approach to International Ethics."

<sup>292</sup> The ‘claim formulation stage’ refers to the social processes through which civil society actors translate *conceptions* of human rights into concrete *claims* that can be made of decision-makers.

<sup>293</sup> The term ‘legalisation’ was defined in Chapter 1. Please see Section 1.5.2.

examines the strategies that the campaign used to influence the legalisation process. Although the three stages involved in the creation of India's right to food act were broadly sequential, there was some measure of overlap between them.<sup>294</sup>

Chapter 4 has a primary and a secondary objective. The primary objective is to evaluate the claim that pre- or non-legalised conceptions of human rights lack the limitations associated human rights *law*. This claim is implicit in the work of scholars who, when critiquing human rights law, point the finger primarily or solely at the legalisation process as the genesis of its limitations.<sup>295</sup> It has also been spelled out explicitly – and in more precise terms – by Stammers in *Human Rights and Social Movements*.<sup>296</sup> In this work Stammers makes two key assertions about pre-legalised human rights. First, he argues that throughout history pre-legalised conceptions of human rights that were ‘deployed by radical sections of movement activism to challenge various forms of “arbitrary power and privilege”’<sup>297</sup> tended to be more *radical* in economic terms than their institutional instantiations. Second, Stammers argues that pre-legalised human rights tended to be more *inclusive* than their legalised versions.

To support the contention that pre-legalised human rights have tended to be more *economically radical* than their institutional instantiations Stammers reviews several

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<sup>294</sup> Several other scholars have talked about the ‘stages’ involved in the creation of human rights/human rights law including Plummer and Bob. For example, please see: Ken Plummer, "Rights Work: Constructing Lesbian, Gay and Sexual Rights in Late Modern Times," in *Rights - Sociological Perspectives* ed. Lydia Morris (London: Routledge, 2006); Clifford Bob, ed. *The International Struggle for New Human Rights* (Philadelphia: University of Pennsylvania Press, 2009). However, the rights-creation stages proposed by these scholars do not accord with the empirical reality of the work of the Right to Food Campaign. The existence of different rights-creation stages will be discussed further in the conclusion to this thesis.

<sup>295</sup> For example, Pieterse, "Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited."; Stammers, *Human Rights and Social Movements*; Basak Cali and Saladin Meckled-Garcia, "Human Rights *Legalized* - Defining, Interpreting, and Implementing an Ideal," in *The Legalization of Human Rights - Multidisciplinary Perspectives on Human Rights and Human Rights Law*, ed. Başak Çalı and Saladin Meckled-Garcia (London: Routledge, 2006).

<sup>296</sup> Stammers, *Human Rights and Social Movements*.

<sup>297</sup> *Ibid.* 40.

histories of human rights and argues that these demonstrate that pre-legalised *natural rights* – which are, of course, today generally seen as tantamount to civil and political rights – had radical economic dimensions that had more to do with protecting subsistence rights than bourgeois property rights. For example, he argues that in England pre-legalised natural rights were used to defend the customary rights of the poor (such as grazing rights threatened by enclosure). He also argues that in revolutionary France radical social forces propagated ideas of natural rights that challenged the interests of the emerging propertied elites, but that these were defeated in and through the process of institutionalisation.<sup>298</sup>

In support of the claim that pre-legalised human rights have tended to be more *inclusive* than their institutional instantiations, Stammers – again drawing on several histories of human rights – argues that during struggles for social transformation in a number of different social contexts, pre-legalised natural rights ‘asserted particular notions of collective identity and collective right, usually in the form of “we the people” and that it was only at the point of legalisation that ‘decisions [were] taken as to who was “in” and who was “out” of any particular collective “we”’ (the excluded usually being women, indigenous peoples, slaves, the propertyless and the poor).<sup>299</sup> Stammers acknowledges that the ‘ideological world views justifying such exclusions did not “suddenly appear”’ at the point of legalisation; he nonetheless sees the process of legalisation as deeply implicated in the creation of exclusions on the basis that legalisation ‘required a degree of closure in so far as political and juridical status had to be formally set out [...]’.<sup>300</sup>

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<sup>298</sup> Ishay, *The History of Human Rights: From Ancient Times to the Globalization Era*. Cited in Stammers, *Human Rights and Social Movements*. 113.

<sup>299</sup> Stammers, *Human Rights and Social Movements*. 118.

<sup>300</sup> *Ibid.* 112.

An analysis of Indian civil society's pre-legalised conceptions of human rights supports Stammers' first claim; that is, the contention that pre- or non-legalised conceptions of human rights can be more *economically radical* than extant human rights law (although it must be noted that the work of scholars such as de Sousa Santos and Claeys has already demonstrated this).<sup>301</sup> However, Chapter 4 proceeds to make the case that the story does not end there. Drawing on Hopgood's typology of *approaches* to human rights, Chapter 4 argues that not *all* actors who are involved in human rights work are likely to support the formulation of *economically radical* conceptions of human rights. More specifically, it is argued that social actors engaged in what Hopgood refers to as lowercase 'human rights' are likely to support the formulation of *economically radical* conceptions of human rights while social actors engaged in what Hopgood terms uppercase 'Human Rights' are likely to resist the formulation of *economically radical* conceptions of human rights *if these depart too radically from existing human rights norms*. This is because actors engaged in uppercase 'Human Rights' fear that the creation of human rights which depart too radically from existing human rights law will undermine the integrity and therefore the effectiveness of human rights law.<sup>302</sup> The thesis that non- or pre-legalised conceptions of human rights can be more *economically radical* than human rights law may, therefore, Chapter 4 proposes, need to be restricted to conceptions of rights that are formulated by actors engaged in what Hopgood refers to as lowercase 'human rights' work.

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<sup>301</sup> De Sousa Santos and Rodriguez-Garavito, *Law and Globalization from Below - Towards a Cosmopolitan Legality*; Priscilla Claeys, *Human Rights and the Food Sovereignty Movement - Reclaiming Control* (London: Routledge, 2015).

<sup>302</sup> Stephen Hopgood, *The Endtimes of Human Rights* (Ithaca: Cornell University Press, 2013).

An analysis of Indian civil society's pre-legalised conceptions of human rights does not, however, support Stammers' second claim; that is, the contention that the creation of rights exclusions can be associated primarily with the legalisation process. Indeed, Chapter 4 argues that the genesis of rights exclusions is just as likely to be traced to the 'conceptualisation stage' of the human rights-law creation process as to the 'legalisation stage'. This is because ideas about what human rights mean (or should mean) are commonly constructed by *particular* social groups who are pursuing *particular* needs; and rights that are constructed around the needs of *particular* groups are likely to be exclusionary.

The secondary objective of this chapter is to lay the groundwork for the analysis presented in the forthcoming chapters. By describing and analysing Indian civil society's pre-legalised conceptions of the right to food in some detail, Chapter 4 also facilitates an analysis of how and why these conceptions developed and changed during the legalisation process (discussed in Chapter 5 and Chapter 7).

Chapter 4 is laid out as follows. Section 4.2 describes and analyses the two main conceptions of the right to food that emerged among Indian civil society in the early days of the campaign for the right to food act. The first was referred to by the campaign as the *individual entitlements* conception while the second was referred to as the *structural change* conception. Section 4.2 also notes that the *structural change* conception supports the contention that pre-legalised conceptions of human rights can be economically radical. Section 4.3, drawing on Hogwood's typology of approaches to human rights, proceeds to argue that some actors are likely to support while some actors are likely to resist the development of radical conceptions of human rights.

Section 4.4, meanwhile, argues that social processes that take place during the ‘conceptualisation stage’ of the rights-creation process can – like those that take place during the legalisation stage – lead to the creation of rights exclusions. A chapter summary is provided in Section 4.5.

## **4.2. Two Competing Conceptions of the Right to Food**

### **4.2.1. The ‘Individual Entitlements’ Conception**

Two main conceptions of the right to food emerged among Indian civil society in the early days of the campaign for the act. The first was referred to as the ‘individual entitlements’ conception and the second was referred to as the ‘structural change’ conception. The *individual entitlements* conception was centred on the provision of individual entitlements to free or highly subsidised food, cash transfers and basic nutrition-related healthcare services. The proponents of this conception of the right to food intended that these entitlements be delivered through the schemes that had been converted into constitutional entitlements by the Supreme Court (i.e. for those schemes to be incorporated into the new law) and a number of new schemes targeting neglected groups.

The main entitlements proposed by the proponents of this approach were as follows:

- Subsidised basic food items for the entire population including rice, grain, pulses and cooking oil (to be delivered through the Public Distribution System);
- Freshly cooked nutritious midday meals for primary and secondary school children (to be delivered through the Midday Meals Scheme);
- Supplementary nutrition and basic nutrition-related healthcare services for the under-fives such as weight monitoring and immunisations (to be delivered through the Integrated Child Development Scheme);
- Cash transfers for pregnant and breastfeeding women to assist with the purchase of supplementary nutrition and breastfeeding support and counselling (to be delivered through the Maternity Benefits Scheme);
- Cash pensions for the over 60s (to be delivered through the Old Age Pensions Scheme);
- Community kitchens for the homeless (to be delivered through a new scheme that it was hoped the state would set up);
- Feeding centres for the destitute (to be delivered through a new scheme that it was hoped the state would set up).<sup>303</sup>

Where did the *individual entitlements* conception of the right to food come from? It seems to have a *social democratic* flavour.<sup>304</sup> However, ‘world views’ such as social

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<sup>303</sup> These proposed entitlements were written up into a document titled the ‘Essential Demands’ document. This document went through numerous revisions and the author could not locate an early version of it. However, the content of this document was recalled by numerous interviewees including: Interview with Sita (pseudonym) on 1 September 2014, India; Interview with Meena (pseudonym) on 19 August 2014, India; and Interview with Nalini (pseudonym) on 27 August 2014, India.

<sup>304</sup> Please see Chapter 1 for a discussion of the influence of ‘worldviews’ on conceptions of human rights.



democracy, liberalism and neoliberalism do not appear to have shaped the *individual entitlements* conception.<sup>305</sup> Rather, the *individual entitlements* conception seems to have been shaped, first and foremost, by the outcomes of the right to food case. Numerous Right to Food Campaign members, including influential campaign leaders, viewed the statute initiative as an extension of their work on the case; for them, the act was simply a tool with which to consolidate and build on the gains that they had made through the litigation (this is discussed in more detail in Chapter 5).<sup>306</sup> This group of actors, therefore, merely wanted the proposed act to provide for a) the schemes that had been converted into constitutional entitlements by the interim orders of the Supreme Court; and b) several new schemes targeting erstwhile neglected groups.

It is important to emphasise that many of those who saw the right to food in *individual entitlements* terms viewed the campaign for the right to food act as just one element of a broader agenda to expand India's undersized welfare state.<sup>307</sup> Numerous Right to Food Campaign members were or had in the past been involved in other social rights-related initiatives such as the demand for pensions for the elderly (yet to be achieved at the national level) or the campaign for the National Rural Employment Guarantee Act which was passed in 2005. This statute (which is variously referred to as 'NREGA', the 'right to work' or the 'right to work law') created a social protection scheme guaranteeing 100 days of work per year to rural households.<sup>308</sup> Shoma, an activist

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<sup>305</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

<sup>306</sup> For example, the following interviewees seemed to see the goals of right to food act in these terms: Krishna (pseudonym), interviewed on 13 August 2014, India; Interview with Jayati (pseudonym) on 25 August 2014, India (pseudonym), interviewed on 25 August 2014, India; and Interview with Anil (pseudonym) on 27 August 2016, India (pseudonym), interviewed on 27 August 2016, India.

<sup>307</sup> India spends less on social protection per capita than Nepal, Sri Lanka and Bhutan, all of which are considerably poorer than India in GDP per capita terms. Please see: Asian Development Bank, "The Social Protection Index - Assessing Results for Asia and the Pacific," (Mandaluyong City, Philippines: Asian Development Bank, 2013).

<sup>308</sup> *The National Rural Employment Guarantee Act*, (2005).

working for a women's empowerment NGO, explained the interconnections between the right to food and the National Rural Employment Guarantee Act as follows:

NREGA campaign is no different from right to food campaign for [our organisation] because what we call '*rozi-roti*' – in Hindi, *rozi* means livelihood and *roti* means food – [...] are both linked to each other. Unless you have *rozi* – livelihood – you won't have *roti* – food – and unless you have food, you won't be strong enough and would not be able to work so they are linked as *rozi-roti*; [...] they are not two different programmes.<sup>309</sup>

Bharka, a campaign leader and Steering Group member working for another women's NGO, also stressed the interconnections between the various initiatives that she and other campaign members were working on:

See, initially I said access and availability. How to access? Food grain is there in the ration shop, but I don't have the money to buy that. Even if it is for one rupee but that one rupee, if I don't have, then how can you ensure my food security? So for that we are asking [for] this 'right to work' and for the old people, that is why we are demanding pension[s]. [...] That's why all these demands are coming to our charter.<sup>310</sup>

Many interviewees, therefore, referred to the various initiatives that they had in the past or were presently working on interchangeably.

The campaign members who conceived of the right to food in these terms were, in essence, seeking to expand the scope of the right to food from the content it had been

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<sup>309</sup> Interview with Shoma (pseudonym) on 14 August 2014, India.

<sup>310</sup> Interview with Bharka (pseudonym) on 4 September 2014, India.

accorded by the Supreme Court. As discussed earlier, Lockwood has conceptualised this phenomenon as one of ‘civic expansion’ and argued that the boundaries of rights ‘are continually tested and contested’ by activists who deploy the ‘moral and material resources’ at their disposal to enlarge them. Interestingly, given recent scholarly interest in the extent to which the poor and the oppressed (the metaphorical ‘below’) are able to shape human rights law, Lockwood argues that the boundaries of rights are usually contested by ‘those whose resources are greater rather than lesser’.<sup>311</sup> He refers to these actors as ‘civic activists’ and suggests that they tend to be “‘postmaterialist” in orientation’, with many of their policies aimed at “‘decommodification” by the subordination of market values to human rights’.<sup>312</sup> Lockwood’s characterisation of civic activists and their goals accords with the social composition and objectives of many Right to Food Campaign members, especially the core leadership.<sup>313</sup>

The *individual entitlements* conception of the right to food also seems to have been influenced by Right to Food Campaign activists’ lived experiences working with rights claimants. Shoma, a campaign member working on women’s empowerment, explained how the National Rural Employment Guarantee Act was shaped by NGO initiatives to support food-insecure poor people:

[There was] a lack of work; a lack of food at home; [and then] women’s own lived experience resulted into a change in the programme design at the district level and this led to strengthening the national campaign for a people’s right to work which resulted into legislation called NREGA [the ‘right to work’ law].<sup>314</sup>

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<sup>311</sup> Lockwood, "Civic Integration and Class Formation." 542.

<sup>312</sup> *Ibid.* 542.

<sup>313</sup> Please see Chapter 2, Section 2.5 for further information about the composition of the Right to Food Campaign.

<sup>314</sup> Interview with Shoma (pseudonym) on 14 August 2014, India.

Shoma further remarked she would ‘define [her organisation] as a rights-based organisation where the definition of rights comes from the collectives with which [they] work [...]’; and therefore, that she and her colleagues ‘don’t have a pre-defined definition’ of human rights’.<sup>315</sup> Nidhi, a former member of the Right to Food Campaign, also pointed to the role of campaign members’ lived experiences working with rights claimants in shaping their conceptions of the right to food: ‘I think our own understanding of these issues is shaped by having spent a lot of time with ordinary people; so some of the insights which we have which we bring over to policy have benefited from them’.<sup>316</sup> Illustrating her point in relation to the commitment of many Right to Food Campaign members to the creation of universal rather than targeted and means-tested programmes she continued: ‘I mean, we have seen how much people suffer because of this targeting’.<sup>317</sup>

Sita, a farmers’ rights activist who was not a member of the Right to Food Campaign, but who had engaged with them in relation to the right to food statue initiative, even remarked that:

[...] I’ll not even begin saying they imported an idea from elsewhere and so on, it’s as *sui generis* as it can get from where they were working; they realised that wages were an issue; they realised that lack of adequate work, adequate number of days of work was an issue, so they evolved solutions as and when, you know, something was unfolding in their own work.<sup>318</sup>

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<sup>315</sup> *Ibid.*

<sup>316</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

<sup>317</sup> *Ibid.*

<sup>318</sup> Interview with Sita (pseudonym) on 1 September 2014, India.

Interestingly, Right to Food Campaign members' experiences working with rights claimants to assist them to exercise the rights that they had accorded by the courts seems to have created a strong understanding of the role that 'civic deficit'<sup>319</sup> – both 'power deficit'<sup>320</sup> and 'stigmatised deficit'<sup>321</sup> – plays in impeding the poor's access to formally-held rights; and this in turn shaped their understanding of what the right to food should look like. In order to ensure that the rights claimants were able to exercise their rights under the proposed right to food law, and without being stigmatised, the majority of those who saw the right to food in *individual entitlements* terms wanted: a) the entitlements to be universally available rather than targeted and subject to means-testing; and b) effective oversight mechanisms and grievance redressal mechanisms to be put in place.

The opposition to means-testing has to be understood in the context of the introduction of targeting to the Public Distribution System in the late 1990s. The Public Distribution System was set up in the post-war period to ensure access to affordable (i.e. highly subsidised) basic food items such as rice, grain, pulses and cooking oil. Until 1997, all Indian residents were able to obtain a 'ration card' which could be used to purchase these items at local 'ration shops' – although in practice the functioning of this system was highly variable throughout the country. In 1997, however, at the behest of the World Bank, the Public Distribution System was 'de-universalised'. This took the form of using an income poverty criterion to differentiate between those who were *above the poverty line*<sup>322</sup> (abbreviated as 'APL') and those who were *below the poverty line*

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<sup>319</sup> Part of Lockwood's 'civic stratification' framework, the concept of civic deficit was defined in Chapter 1.

<sup>320</sup> Please see Chapter 1, Section 1.3.2 for a definition of 'power deficit'.

<sup>321</sup> Please see Chapter 1, Section 1.3.2 for a definition of 'stigmatised deficit'.

<sup>322</sup> Based on the national poverty line.

(abbreviated as 'BPL'). The Public Distribution System – or 'PDS', as it is more commonly referred to in India – was then calibrated to provide a higher quantity of food grains at lower prices to BPL households with APL households to be entitled to a smaller quantity of food grains at no subsidy at all.<sup>323</sup> The introduction of targeting to the Public Distribution System and the resultant exclusion of millions of people from its remit can be understood as a form of 'civic contraction', carried out in the context of a wider set of neoliberal economic reforms in India.<sup>324</sup> In addition, some of the food items available under the Public Distribution System including pulses (a source of protein) and cooking oil (a source of fat) were cut.

Targeting was seen by anti-poverty activists and scholars as constituting 'a complete failure both in terms of the high errors of exclusion [it] propagated and [the] significant level of inefficiency and corruption that [...] characterised its operations'.<sup>325</sup> Numerous studies demonstrate that large numbers of extremely poor people were unable to obtain the 'Below Poverty Line' cards that mediated access to affordable food after 1997. For example, one study of 400 randomly-selected households from eight villages in the state of Rajasthan found that nearly half of the households (44 percent) which should have been categorised as 'Below Poverty Line' were not, while nearly a quarter of households that *were* categorised as 'Below Poverty Line' should not have been.<sup>326</sup>

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<sup>323</sup> Jayal, *Citizenship and Its Discontents: An Indian History*. See also: "Chakravarty and Dand, "Food Insecurity in Gujarat: A Study of Two Rural Populations." 2249.

<sup>324</sup> ayal, *Citizenship and Its Discontents: An Indian History*.

<sup>325</sup> Chakravarty and Dand, "Food Insecurity in Gujarat: A Study of Two Rural Populations." 2249.

<sup>326</sup> Reetika Khera, "Access to the Targeted Public Distribution System: A Case Study in Rajasthan," *Economic & Political Weekly*, Vol. 43, No. 44 (2008): 51-55. 51-56. See also: Indira Hirway, "Identification of BPL Households for Poverty Alleviation Programmes," *Economic and Political Weekly*, Vol. 38, No. 45 (2003): 4803-08; Renana Jhabvala and Guy Standing, "Targeting to the 'Poor': Clogged Pipes and Bureaucratic Blinkers," *ibid.* Vol. 45, No. 26/27 (2010): 239-46.

The importance of creating universal schemes came up repeatedly in interviews. Bharka, the member of the Right to Food Campaign's leadership mentioned above, explained her commitment to universalisation in light of the problems that had arisen in the post-1997 period:

[...] they divided the people into two; BPL, "Below Poverty Line" and "Above Poverty Line" based on stupid criteria; [...] and then *lakhs* [hundreds of thousands] of families did not get the [ration] card at all and those who got the card, that was a wrong identification.<sup>327</sup>

Nidhi, an academic and former member of the Right to Food Campaign, expressed her commitment to universal provision in similar terms: '[...] my understanding is that the best way to reach the neediest is to have universal [programmes]; that if you do targeted then there is such a fight to get in that the neediest and most vulnerable are the ones who get left out'.<sup>328</sup> The importance of universality was also emphasised by Narendra, a senior staffer at a Dalit rights NGO in light of the identity-based discrimination faced by those from 'lower' castes (especially Dalits) and tribal communities (Adivasis). He explained that:

The concept of BPL and APL has to be removed because, see, [...] we had a fear [...] that the right to food bill [would] get passed [and] get implemented, [and] Dalit and Adivasi are again going to be discriminated against because of, again, the identity things; so therefore our recommendation was universalising the right to food things;

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<sup>327</sup> Interview with Bharka (pseudonym) on 4 September 2014, India.

<sup>328</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

everybody should have access; [...] we are in favour of removing all those exclusionary criteria.<sup>329</sup>

For some Right to Food Campaign members, universalisation was also key to eradicating the stigma associated with receiving state assistance (i.e. the phenomenon of ‘stigmatised deficit’). Reflecting on the introduction of means-testing, Nalini, an active Right to Food Campaign member, explained that when targeting was introduced:

People started thinking about PDS as something inferior; to go to ration shop; ‘til then nobody would think of this as something below their dignity. [But now] if you are getting a ration you are ‘below poverty line’ so you are poor; being poor is not [a] very dignified thing.<sup>330</sup>

Nidhi similarly remarked that: ‘[i]t’s very hard to find [the right people to target] and it’s so stigmatising also, no? It can be quite stigmatising to be picked out like that’.<sup>331</sup>

In order to ensure that the schemes were actually set up when the right to food bill was passed – numerous laws in India have been enacted but not implemented<sup>332</sup> – the creation of a strong set of oversight and grievance-redressal mechanisms was also envisioned. These included giving special powers to local government to monitor the implementation of the act and institute criminal proceedings for breaches; appointing ‘grievance redressal officers’ at the local level to receive complaints about the non-

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<sup>329</sup> Interview with Narendra (pseudonym) on 8 September 2016, India.

<sup>330</sup> Interview with Nalini (pseudonym) on 27 August 2014, India.

<sup>331</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

<sup>332</sup> Legislation in India often remains unimplemented. See, for example: Pramathesh Ambasta, P.S. Vijay Shankar, and Mihir Shah, "Two Years of NREGA: The Road Ahead," *Economic and Political Weekly*, Vol. 43, No. 8 (2008): 41-50; Timothy Besley and Robin Burgess, "Land Reform, Poverty Reduction, and Growth: Evidence from India," *The Quarterly Journal of Economics*, Vol. 115, No. 2 (2000): 389-430.



implementation of the act; setting up free helplines for claimants to advise on matters related to non-implementation; and establishing compensation for claimants whose entitlements were wrongfully denied.<sup>333</sup>

In light of widespread evidence that demonstrates that human rights are often ‘unexercisable’ by the least advantaged in contexts characterised by structural inequalities, the empowerment dimension of the *individual entitlements* conception of the right to food raises interesting questions about whether human rights can be designed and delivered in a way which minimises the likelihood that those with the least moral and material resources in a given society will experience ‘a deficit’.

Although it is difficult to evidence, it seems likely that the *individual entitlements* conception of the right to food was also shaped by academic discourse on the links between ‘entitlement relations’ and hunger. As Claeys has documented in her history of the development of the right to food, the ‘entitlements approach’ to combating hunger was first introduced by Amartya Sen in *Poverty and Famines* in 1981.<sup>334</sup> Jean Dreze, a leading member of the Right to Food Campaign, subsequently collaborated with Amartya Sen to produce *Hunger and Public Action*, first published in 1989.<sup>335</sup> In this work, Sen and Dreze attach importance to the public provision of goods which are needed in order to expand human capabilities, making the case that hunger and famines could be eradicated if there were public support for the protection of the entitlements of vulnerable groups. More specifically, they argued for ‘strategies of entitlement protection’ based on employment creation, particularly in the form of public works

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<sup>333</sup> Right to Food Campaign, "Food Entitlements Act," 2009. Available at <http://www.righttofoodcampaign.in/food-act> [Accessed 14 Sept. 2018].

<sup>334</sup> Sen, *Poverty and Famines: An Essay on Entitlement and Deprivation*.

<sup>335</sup> Dreze and Sen, *Hunger and Public Action*.

programmes such as those that were created by the National Rural Employment Guarantee Act. As Dreze held influential positions in both the campaign for the National Rural Employment Guarantee Act and the campaign for the right to food act, he will no doubt have brought this thinking to bear on the development of these campaigns.

The influences on the *individual entitlements* conception of the right to food – namely the outcomes of the right to food case, the lived experience of campaign activists and academic discourse on ‘entitlements’ and poverty – counters Fadaee’s contention that human rights are ‘empty signifiers’, essentially devoid of content.<sup>336</sup> As Wills argues, when employed in concrete social contexts, ‘[h]uman rights are “inscribed with at least basic meanings as a result of their past and present deployments’.<sup>337</sup> Sociologists and anthropologists have long argued that human rights are shaped by the contexts in which they emerge and take form.<sup>338</sup> However, building on Will’s contention, the formulation of the *individual entitlements* conception indicates, more specifically, that human rights can be inscribed with the outcomes of prior legal action, interactions with rights-claimants and academic discourse.

Ensuring access to social protection schemes such as those proposed by the proponents of the *individual entitlements* conception is critical to combating absolute poverty and reducing human suffering. However, as explained in Chapter 1, the establishment of

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<sup>336</sup> Simin Fadaee, "Civil Society Organisations in India and Construction of Multiplicity of Human Rights," *The International Journal of Human Rights*, Vol. 18, No. 4-5 (2014): 567-77.

<sup>337</sup> Wills, *Contesting World Order?: Socioeconomic Rights and Global Justice Movements*. 80.

<sup>338</sup> Sally Engle Merry, *Human Rights & Gender Violence - Translating International Law into Local Justice* (Chicago: The University of Chicago Press, 2006); Shannon Speed, "Exercising Rights and Reconfiguring Resistance in the Zapatista Juntas De Buen Gobierno," in *The Practice of Human Rights - Tracking Law between the Global and the Local* ed. Mark Goodale and Sally Engle Merry (Cambridge: Cambridge University Press, 2008); Claeys, *Human Rights and the Food Sovereignty Movement: Reclaiming Control*.

rights to social protection – even alongside the establishment of other (social democratic-style) rights such as rights to healthcare and education – has not been found to eradicate structural inequalities related to, among other things, the distribution of power and property, and the nature of the international economic system. In this sense, the *individual entitlements* conception of the right to food can be argued to be limited. However, Indian civil society's understanding of the right to food was not limited the *individual entitlements* conception. Numerous civil society activists conceived of the right to food as requiring wide structural changes.

#### 4.2.2. The Right to Food as ‘Structural Change’

The *individual entitlements* conception of the right to food was shaped over the course of the first few years of the campaign for the act as Right to Food Campaign members debated the issues at hand. For example, during this period the merits of universalisation versus means-testing were discussed and the proposed new schemes, such as community kitchens for the urban poor, were envisioned and designed.<sup>339</sup> In its earliest manifestation, however, the *individual entitlements* conception of the right to food was written up into a document titled the ‘Essential Demands’ document by a group of campaign leaders. This took place shortly after the Congress Party formed the UPA II government in May 2009. After the ‘Essential Demands’ document was drafted, it was circulated to Right to Food Campaign members and to wider civil society (hereinafter ‘non-members’) including NGO and independent<sup>340</sup> activists working on agriculture and rural development, often in coordination with India’s farmers’ movements.

It was at this point that an alternative – more radical – vision for the right to food emerged. At the first few consultation meetings convened by the Right to Food Campaign’s leadership, the ‘Essential Demands’ document came under heavy criticism from non-members as well as some of the campaign’s members. The critics put forward a sort of ‘counter conception’ of the right to food, referred to by interviewees as aimed at *structural change*.

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<sup>339</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

<sup>340</sup> Some of these activists were ‘independent’ i.e. not affiliated to an institution. Others were affiliated with particular NGOs at the time of interview, but had the status of ‘independent activists’ in the sense that the activism transcended the work of the organisations that they were affiliated to at a particular point in time.

The *structural change* conception of the right to food was focused on strengthening the livelihoods of the poor i.e. enabling the poor to be able to feed themselves using their own resources rather than having to rely on state assistance. At one of the consultations meetings, Colin Gonsalves, the senior lawyer who had been involved in the initial decision to approach the courts in 2001 argued: ‘We need to make a fundamental change in the [...] campaign; we have done what we can do with entitlements, now we need to look at issues that are making people poor’.<sup>341</sup> In other words, the critics of the *individual entitlements* conception were calling for the right to food to be understood not as *the right to be fed* (i.e. to be provided with state assistance) but as the *right to be able to feed oneself* (although they did not use this terminology). The UN Office for the High Commissioner for Human Rights has made a similar distinction, contending that:

The right to food is NOT the same as a right to be fed. [...] This is a misunderstanding. The right to food is [...] primarily the right to be able to feed oneself in dignity. Individuals are expected to meet their own needs, through their own efforts and using their own resources. To be able to do this, a person must live in conditions that allow him or her to produce food or to buy it.<sup>342</sup>

Several NGOs, including the right to food NGO FIAN, have also drawn a distinction between the right to be fed and the right to be able to feed oneself, as have some members of the transnational peasant movement Via Campesina.

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<sup>341</sup> Right to Food Campaign, "Minutes of the National Consultation on Right to Food Act," (dated 11 July 2009 (on file with author)).

<sup>342</sup> Office of the High Commissioner for Human Rights, "Fact Sheet No. 34, the Right to Adequate Food," (s.l.: Office of the High Commissioner for Human Rights, 2010. Available at <http://www.ohchr.org/Documents/Publications/FactSheet34en.pdf> [Accessed 14 Sept. 2018].). 5.

The critics of the *individual entitlements* conception put forward a number of proposals centred on achieving structural change in order to enable India's rural poor to be able to meet their own food needs. The main focus areas were to:

- Revive India's stagnated rural economy;
- Ensure that poor producers' had control over and access to productive resources such as forests, land, seeds and water; and
- Guarantee poor producers' access to stable markets including by overhauling international trade rules to enable India to impose restrictions on agricultural imports and exports.

Clearly, some of these proposals, if implemented, had the potential to address inequalities of power and resources by taking on '[t]he global system of trade regulation' which contributes to 'enforc[ing] a neo-liberal model of economic policy across the world'.<sup>343</sup>

The rationale for reviving the rural economy lay in the fact that in India, as in most other countries in the global South,<sup>344</sup> extreme poverty (and therefore hunger) is predominantly a rural phenomenon. According to India's National Sample Survey, 31 per cent of rural Indians are poor versus 12 percent of India's urban inhabitants.<sup>345</sup> As the livelihoods of the rural poor are usually derived from small scale farming,

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<sup>343</sup> Benton, "Do We Need Rights? If So, What Sort?." 31.

<sup>344</sup> World Bank, "Agricultural Growth for the Poor: An Agenda for Development," (Washington: World Bank, 2005).

<sup>345</sup> Rangaran Committee estimates that in fact rural poverty stands at 31% for 2011 – 2012. Socio Economic and Caste Census 2011.

associated services and agricultural labour, ‘agricultural growth is central to reducing poverty’ (and therefore hunger).<sup>346</sup>

The *structural change* conception of the right to food also involved protecting tribal peoples’ (Adivasis) and small and medium producers’ control over and access to productive resources such as forests, land, seeds and water, both from the state and corporate actors. ‘[We] [n]eed to see how we can protect the sources of livelihood like land, water, [and] forest’, maintained a rural workers rights activist at a 2009 consultation meeting.<sup>347</sup> ‘We should also emphasize [...] [the] production aspects, especially protecting farmers’ land from corporate [actors]’, suggested another.<sup>348</sup> An aspirational Right to Food Campaign document published subsequently stated that a requirement of the right to food is that ‘land [...] must never be forcibly diverted away from food production for cash crops or industrial use’.<sup>349</sup>

The concern about access to land has to be understood in the context of a sharp rise in state-facilitated land acquisitions for the purposes of, among other things, industrialisation, urban real estate development and biofuels development.<sup>350</sup> A rise in land acquisitions for such purposes is in fact a global phenomenon that has been ‘popularly dubbed the “global land grab”’.<sup>351</sup> In India, the land issue has been so

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<sup>346</sup> World Bank. Beverly D. McIntyre et al., eds., *Agriculture at a Crossroads: International Assessment of Agricultural Knowledge, Science and Technology for Development - Global Report* (Washington: UNDP, UNEP, UNESCO, World Bank, WHO, Global Environment Facility, 2009).

<sup>347</sup> Right to Food Campaign, "Minutes of the National Consultation on Right to Food Act."

<sup>348</sup> Ibid.

<sup>349</sup> "Right to Food: Essential Demands," dated 22 July 2009. Available at [http://www.righttofoodindia.org/data/rtf\\_act\\_essential\\_demands\\_of\\_the\\_rtf\\_campaign\\_220709.pdf](http://www.righttofoodindia.org/data/rtf_act_essential_demands_of_the_rtf_campaign_220709.pdf) [Accessed 11 January 2015].

<sup>350</sup> Maitreesh Ghatak and Dilip Mookherjee, "Land Acquisition for Industrialization and Compensation of Displaced Farmers," *Journal of Development Economics*, Vol. 110 (2014): 303-12. Jennifer Baka, "The Political Construction of Wasteland: Governmentality, Land Acquisition and Social Inequality in South India," *Development and Change*, Vol. 44, No. 2 (2013): 409-28.

<sup>351</sup> Saturnino M. Borras Jr et al., "Towards a Better Understanding of Global Land Grabbing: An Editorial Introduction," *The Journal of Peasant Studies*, Vol. 38, No. 2 (2011): 209-16. Although estimates of the quantity

contentious in political terms that one state government that had been in power for thirty-four consecutive years (in West Bengal) was, according to many observers, toppled by it.<sup>352</sup>

Land acquisitions in India affect three main categories of people:

- ‘Land-losers’ who are the title-holders or owners of the acquired land and are the directly displaced people;<sup>353</sup>
- ‘Livelihood-losers’ who do not own any land, but are nonetheless displaced and deprived of their livelihoods which are derived from lease contracts (i.e. tenant farmers), farm labour or service-provision to displaced communities; and
- ‘Common property resource users’ who are the users of commonly-held forest, land and water resources. These are typically tribal communities that do not have traditions of private landownership.<sup>354</sup>

When land is acquired by the state or corporate actors, compensation is only paid to the ‘land-losers’, although the level of compensation has been criticised as being wholly inadequate in light of the difficulties faced by ‘land-losers’ in securing alternative livelihood opportunities.<sup>355</sup> However, according to Chakravorty, a disproportionate burden of the displacement that follows land acquisitions falls on India’s Adivasi and Dalit populations, with the former impacted primarily as a result of the conversion of

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of land acquired in countries in the global south vary, the World Bank has calculated that transactions relating to some 40 million hectares took place in 2008-09. See: Baka, "The Political Construction of Wasteland: Governmentality, Land Acquisition and Social Inequality in South India." 410.

<sup>352</sup> Sanjoy Chakravorty, "Land Acquisition in India: The Political-Economy of Changing the Law," *Area Development and Policy*, Vol. 1, No. 1 (2016): 48-62. 49

<sup>353</sup> Ibid.

<sup>354</sup> Ibid.

<sup>355</sup> Ghatak and Mookherjee, "Land Acquisition for Industrialization and Compensation of Displaced Farmers."



common property resource land and the latter as livelihood-losers (just 13 percent of Dalits own land). Because they are not land-owners, neither of these groups receives compensation.<sup>356</sup>

The *structural change* conception of the right to food also emphasised the importance of access to forests, seeds and water. Nalini, an active campaign member working with marginal producers reflected several years after the campaign's inception: '[H]ow can I talk about food without water? Without seed?'<sup>357</sup> Poonam, a leading member of the Right to Food Campaign from the west of India – where, of course, the right to food case was originally conceived of in the context of drought-related 'starvation deaths' – also talked about the importance of water access: 'For us on the western [side of] India water was very critical you know?'<sup>358</sup> And as with land, the issue of water featured in the Right to Food Campaign's 'aspirational' public statements: '[...] water must never be forcibly diverted away from food production for cash crops or industrial use'.<sup>359</sup> In addition to a concern about recurring droughts in various parts of the country, the concern with water can be linked to the consequences of the increased pace of industrialisation in India. Over the past decade or so factories that produce non-alcoholic beverages have extracted huge quantities of groundwater leading to water shortages in the surrounding areas as wells and other water sources have dried up. In addition, many private enterprises have discharged their waste to surrounding fields and rivers, resulting in surface and groundwater pollution.<sup>360</sup>

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<sup>356</sup> Chakravorty, "Land Acquisition in India: The Political-Economy of Changing the Law."

<sup>357</sup> Interview with Nalini (pseudonym) on 27 August 2014, India.

<sup>358</sup> Interview with Poonam (pseudonym) on 1 August 2014, India.

<sup>359</sup> Right to Food Campaign, "Right to Food: Essential Demands."

<sup>360</sup> Inga Winkler, *The Human Right to Water: Significance, Legal Status and Implications for Water Allocation* (Oxford: Hart Publishing, 2012).

Some of those who saw the right to food in *structural* terms also sought to ensure that India's small and medium producers had access to stable markets. This issue had two components. The first involved obligating the state to procure all of the food for the schemes for the proposed act from India's small and medium farmers at a remunerative price (called the 'minimum support price' or 'MSP'), rather than importing it. The state already procured significant quantities of produce from India's farmers at a minimum support price on an annual basis, although there was no statutory requirement to do so. The minimum support price was usually slightly higher than the market price, but the important aspect of the system was that the state committed to procure a particular quantity of produce at a specific price before the growing season started. This provided incentives for farmers to grow and reduced their risks. After being procured by the state, the produce was stored in *godowns* (warehouses) and distributed to Public Distribution System ration shops or released onto the open market when supplies were low. This facilitated stable prices for consumers by preventing distributors from buying low at harvest time when produce was plentiful and selling high later.<sup>361</sup>

The proponents of the *structural change* conception emphasised that the procurement should take place from producers throughout India and not just from dominant wheat- and rice-producing regions such as Uttar Pradesh and Punjab. As well as guaranteeing livelihoods for a larger number of farmers, this would, it was envisioned, assist in reviving the rural economy throughout much of India. Poonam explained: 'theoretically MSP is important to stabilise markets; to encourage people to grow; to diversify; to decentralise [...]. So [it's important for] supporting rural livelihoods'.<sup>362</sup>

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<sup>361</sup> S.S. Acharya, "Agricultural Marketing in India: Some Facts and Emerging Issues," *Indian Journal of Agricultural Economics*, Vol. 53, No. 3 (1998): 311-32.

<sup>362</sup> Interview with Poonam (pseudonym) on 1 August 2014, India.

The second component of the ‘stable markets’ dimension of the *structural change* conception was to ensure that India’s farmers had better protection from imports more generally as small producers in the global South ‘have been poorly served by trade’.<sup>363</sup> The progressive expansion of commercial industrial relations in agriculture puts strain on these producers who are forced to contend with direct competition from production systems that are highly subsidised and capital intensive and therefore able to produce commodities that can be sold more cheaply.<sup>364</sup> In this context, advocates of a *structural change* conception of the right to food wanted to see ‘effective [...] systems of minimum support prices, price stabilisation, effective grain movement and storage, as well as strict regulation of speculation and trade’.<sup>365</sup>

Sonia, an NGO activist working with India’s farmers’ movements explained:

‘[...] we are always against imports, especially when our farmers are growing [produce] and are not getting [acceptable] prices because of the dumping from outside [...]; if you look at the kind of [farmers’] suicides which has happened in India, especially in the cotton belt, its mainly because of the imports’.<sup>366</sup>

The *structural change* conception of the right to food seems to have been shaped by its proponents’ lived experience working with the rural poor on the one hand and scholarly/development community discourse on how to eradicate extreme poverty and hunger through strengthening agricultural livelihoods on the other. Over the past ten to

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<sup>363</sup> McIntyre et al., *Agriculture at a Crossroads: International Assessment of Agricultural Knowledge, Science and Technology for Development - Global Report*. 8.

<sup>364</sup> Ibid.

<sup>365</sup> Right to Food Campaign, "Right to Food: Essential Demands."

<sup>366</sup> Interview with Sonia (pseudonym) on 5 August 2014, India.

fifteen years, a scholarly and development community consensus has arisen around the importance of agricultural livelihoods and agricultural growth to the eradication of poverty and hunger. The World Bank has even insisted that '[u]nless more attention is given to promoting agricultural growth, debilitating hunger will persist'.<sup>367</sup> This is perhaps especially the case in India where the contribution of agriculture and associated services to GDP fell from 52 percent in 1950 to 14 percent in 2013,<sup>368</sup> even though in 2013 around 50 per cent of India's labour force remained dependent on agriculture for their livelihoods.<sup>369</sup> Sita, an activist non-member who works on rural development in cooperation with India's farmers' movements explained the rationale for strengthening agricultural livelihoods as follows:

You know its commonsensical that you deal with agricultural livelihoods and you may be able to deal with hunger, malnutrition, poverty, and if you had any good gender lens that you were wearing at all you would have taken care of gender equality, given that the largest concentration of women workers in India as well as elsewhere is in agriculture.<sup>370</sup>

The discourse on combating extreme poverty and hunger by strengthening agricultural livelihoods focuses, in particular, on the importance of increasing agricultural productivity.<sup>371</sup>

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<sup>367</sup> World Bank, "Agricultural Growth for the Poor: An Agenda for Development." 6.

<sup>368</sup> Planning Commission of India, Data Table, Databook, *GDP at Factor Cost at 2004-05 Prices, Share to Total GDP and % Rate of Growth in GDP* (31 December 2014). Accessed at: [http://planningcommission.nic.in/data/datatable/data\\_2312/DatabookDec2014%202.pdf](http://planningcommission.nic.in/data/datatable/data_2312/DatabookDec2014%202.pdf) (4 Mar. 2018)

<sup>369</sup> Ibid.

<sup>370</sup> Interview with Sita (pseudonym) on 1 September 2014, India.

<sup>371</sup> Frank Ellis and Stephen Biggs, "Evolving Themes in Rural Development 1950s-2000s," *Development Policy Review*, Vol. 19, No. 4 (2002): 437-48. Jan Douwe van der Ploeg, "Poverty Alleviation and Smallholder Agriculture: The Rural Poverty Report 2011," *Development and Change*, Vol. 43, No. 1 (2012): 439-48.

Interestingly, Indian civil society's *structural change* conception of the right to food is similar in numerous respects to the *structural approach* to the right to food employed by the international right to food NGO FIAN, perhaps because so many of the impediments to rural livelihoods and the eradication of hunger lie in the nature of the international economic system.

#### 4.2.3. The Relationship between Individual Entitlements and Structural Change

Interestingly, the informants interviewed for this study appeared to treat the two conceptions of the right to food as though there were a stark dichotomy between them. In fact, the establishment of individual entitlements in India also has the potential to contribute to structural change of various kinds. For example, the ability of agricultural workers to access paid employment through the National Rural Employment Guarantee Act has reportedly started to reshape relations between workers and farmers in some regions as a result of the fact that workers are now significantly less dependent on farmers for their livelihoods.<sup>372</sup> Equally, by recognising that 'school meals are an instrument to teach children social equality' and ruling that 'preference be given to Dalit cooks', the Indian Supreme Court rendered the Midday Meals Scheme a means of breaking down structures of caste; traditionally, individuals from the 'upper' castes have refused to consume food that has been touched by, let alone prepared by individuals from 'lower' castes.<sup>373</sup>

The analysis laid out above supports the contention that pre- or non-legalised human rights can be radical in economic terms, capable of addressing problematic facets of the international economic system and concerns regarding control over and access to

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<sup>372</sup> D. Narasimha Reddy, A. Amarender Reddy & M. C. S. Bantilan (2014) The Impact of Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) on Rural Labor Markets and Agriculture, *India Review*, 13:3, 251-273, DOI: [10.1080/14736489.2014.937271](https://doi.org/10.1080/14736489.2014.937271).

<sup>373</sup> Harsh Mander, "Food from the Courts: The Indian Experience," *IDS Bulletin*, Vol. 43, No. S1 (2012): 15-24.

productive resources. As discussed below, the *structural change* conception of the right to food does not appear to go as far as calling for wealth (i.e. land) *redistribution*. However, it does press strongly for land to be kept in the hands of small and medium farmers rather than transferred to the state or domestic or transnational capital. However, the next section of Chapter 4 re-evaluates the contention that pre-legalised human rights claims can be radical in economic terms by drawing on Hopgood's typology of approaches to human rights. It argues that some actors engaged in pre-legalised human rights work are likely to resist radical formulations of rights for fear of undermining the integrity of international human rights law.

### 4.3. Uppercase ‘Human Rights’ and Radical Conceptions of Human Rights

#### 4.3.1. Hopgood’s Typology of Approaches to Human Rights

In a 2013 work titled *The Endtimes of Human Rights* (hereinafter ‘*Endtimes*’) Hopgood argued that there are two distinct ‘approaches’ to human rights at work in the world today: uppercase ‘Human Rights’ which is a top-down ‘New York-Geneva-London centred ideology’<sup>374</sup> that aims to revolutionise global politics by investing international law with the power to ‘transcend [...] the authority of states and peoples’,<sup>375</sup> and lower case ‘human rights’ which is the diverse array of bottom-up struggles that use human rights instrumentally in an attempt to change the world in small positive ways.<sup>376</sup> Although Hopgood seems to treat his typology as an accurate reflection of the world as it is, it should, perhaps, best be viewed as a Weberian ideal type.<sup>377</sup>

To a significant degree, the above demarcation equates uppercase ‘Human Rights’ with the work of the most predominant international human rights law actors – NGOs such as Amnesty International and Human Rights Watch and UN human rights mechanisms such as special rapporteurs and treaty bodies – and lowercase ‘human rights’ with social movements. This is a demarcation that has been made by numerous other observers. Yamin, for example, has suggested that:

While in any number of countries social movements, including women’s movements, environmental movements, indigenous movements, and labor movements, have used

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<sup>374</sup> Hopgood, Stephen. “Human Rights: Past their Sell-by Date” in *OpenGlobalRights Blog*, 2013. Available at: <https://www.openglobalrights.org/human-rights-past-their-sell-by-date/> [Accessed 11 Jan. 2018].

<sup>375</sup> Hopgood, *The Endtimes of Human Rights*.

<sup>376</sup> Ibid.

<sup>377</sup> Susan J Hekman, *Weber, the Ideal Type, and Contemporary Social Theory* (s.l.: M. Robertson, 1983).

the discourse of human rights to underpin their claims, and have even created new fields of rights, their work often remains somewhat divorced from that of the mainstream human rights community.<sup>378</sup>

She argues that in order to put the notion of participation into practice within the world of human rights, there needs to be ‘far greater collaboration between traditional human rights communities and a broad range of social movements’.<sup>379</sup> Balakrishnan, similarly, in the context of his work on ‘human rights from below’, draws a distinction between social movements and NGOs. He contends that in the Habermasian vision of civil society, which represents ‘the current understanding of civil society in international-law and international-relations scholarship [...] civil society constitutes a small and privileged arena of liberal NGOs’;<sup>380</sup> and that ‘[t]his understanding completely overlooks the important analytical and conceptual differences between NGOs and social movements [...]’.<sup>381</sup>

In contrast to Yamin and Balakrishnan, Hopgood focuses on differences between *approaches* to human rights, rather than on different types of *actors* that use human rights. Hopgood’s typology is arguably able to capture more complexity than an actor-centred approach. As Hopgood recognises, an individual could be employed in the world of uppercase ‘Human Rights’, but understand and advocate for them as lowercase ‘human rights’. De Mello, the United Nations High Commissioner for Human Rights who was assassinated in Baghdad in 2003 is an example of such an individual, Hopgood writes. De Mello represented ‘Human Rights but understood them

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<sup>378</sup> Yamin, "The Future in the Mirror: Incorporating Strategies for the Defense and Promotion of Economic, Social and Cultural Rights into the Mainstream Human Rights Agenda." 1239.

<sup>379</sup> Ibid. 1239.

<sup>380</sup> Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*. 261.

<sup>381</sup> Ibid. 261.



as human rights'.<sup>382</sup> In support of his characterisation of de Mello, Hopgood points to the fact that he declared just months before his death that the: 'culture of human rights must be a popular culture if it is to have the strength to withstand the blows that will inevitably come [and if] it is to be able to innovate and to be truly owned at the national and sub-national levels'.<sup>383</sup>

The existence of some kind of analytical difference between actors engaged in uppercase 'Human Rights' and actors engaged in lowercase 'human rights' seems to have gone more or less unchallenged in the literature. It is striking that in a special publication commissioned by Amnesty International Netherlands in 2014 to debate *Endtimes*, not a single contributor – which included scholars and practitioners such as Michael Barnett, Todd Landman, Steve Crawshaw, Cesar Rodriguez-Garavito, Monica Duffy Toft, Stephen A. Lamony, Noel M. Morada, Frank Johansson and Daan Bronkhorst – disputed the existence of *some* kind of difference between the two approaches.<sup>384</sup>

Although this is not laid out explicitly in *Endtimes*, Hopgood seems to distinguish uppercase 'Human Rights' from lowercase 'human rights' along three main dimensions:

- In terms of the objectives that each approach pursues;
- In respect of the status that each approach ascribes to human rights law; and

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<sup>382</sup> Hopgood, *The Endtimes of Human Rights*.XV.

<sup>383</sup> Ibid. XV quoting Sergio Vieira de Mello speaking at the Commission on Human Rights in Geneva

<sup>384</sup> Doutje Lettinga and van Lars Troost, eds., *Debating the Endtimes of Human Rights: Activism and Institutions in a Neo-Westphalian World* (s.l.: Amnesty International Netherlands, 2014. Available at [https://www.amnesty.nl/content/uploads/2016/12/debating\\_the\\_endtimes\\_of\\_human\\_rights.pdf?x97451](https://www.amnesty.nl/content/uploads/2016/12/debating_the_endtimes_of_human_rights.pdf?x97451) [Accessed 1 Feb. 2016].

- In relation to the strategies that each approach deploys.

The first two dimensions of Hopgood's typology are relevant to the arguments laid out in this chapter. We will return to the third dimension in Chapter 6.

As noted above, according to Hopgood the main objective of uppercase 'Human Rights' is to revolutionise global politics via the constitutionalisation of international human rights law and to invest international law with the power to 'transcend [...] the authority of states and peoples'.<sup>385</sup> For Hopgood, a key objective of 'Human Rights' is, therefore, the defence of international law as *an end in itself*.

By contrast, those working on the lowercase variety view human rights as an instrument or tool; for 'human rights' activists, human rights are just one among many mechanisms that can be used in pursuit of social change, whether to 'help prevent torture, disappearances, or extrajudicial executions or to demand economic and social rights to food, water, and health care'.<sup>386</sup> Lowercase 'human rights' 'does not "defend human rights", it defends the person [...]'.<sup>387</sup>

Because lowercase 'human rights' has no evident interest in the global project to constitutionalise international human rights law, its adherents attribute no special status to international human rights law norms. By contrast, they view human rights as 'bottom-up democratic norms' that are 'malleable, adaptable, pragmatic and diverse';<sup>388</sup> and that can be used interchangeably with other languages of resistance

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<sup>385</sup> *dtimes of Human Rights*.8.

<sup>386</sup> *Ibid.* IX.

<sup>387</sup> *Ibid.* IX.

<sup>388</sup> *Ibid.*

such as ‘justice’, ‘freedom’, ‘fairness’ and ‘peace’, vis-à-vis which they hold no special status.<sup>389</sup> The way in which the peasant movement Via Campesina invokes rights that have been recognised in international law such as the right to food alongside non-legalised rights that the movement has itself claimed, such as the international human right to food sovereignty, *without* distinguishing between their respective statuses, is an illustration of this way of using human rights.<sup>390</sup> Uppercase ‘Human Rights’, by contrast, views human rights law as top down authoritative rules which are inflexible and non-negotiable.<sup>391</sup>

#### 4.3.2. The Campaign for the Right to Food Act: A ‘Lowercase’ Endeavour

It is difficult, if not impossible, to conceive of the Right to Food Campaign as belonging to the world of uppercase ‘Human Rights’. Of the sixty-six Right to Food Campaign member organisations reviewed by the author in order to identify potential interviewees, just three described themselves primarily as ‘human rights organisations’ and all of those worked on domestic not international human rights law.<sup>392</sup> The remainder of the organisations reviewed for this study worked on a diverse range of issues from civic governance and women’s empowerment to the needs of small producers and children’s health. Although they often used human rights language in their documentation, they had no evident interest in promoting the right to food – or, indeed any other human right – as an end in itself.<sup>393</sup> Otherwise put, they were issue-oriented rather than law-oriented.

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<sup>389</sup> Ibid.

<sup>390</sup> Claey, *Human Rights and the Food Sovereignty Movement - Reclaiming Control*.

<sup>391</sup> Hopgood, *The Endtimes of Human Rights*. IX

<sup>392</sup> Simple desk-based mapping conducted by the author.

<sup>393</sup> Ibid.

#### 4.3.3. Uppercase ‘Human Rights’ and the Integrity of International Human Rights Law

Hopgood does not elaborate on the reasons why uppercase ‘Human Rights’ treats human rights law as inflexible and non-negotiable. And, of course, it cannot be the case that uppercase ‘Human Rights’ views human rights law as ‘static’; the law naturally develops and ‘expands’ over time as judges develop case law and legislatures enact statutory legislation. What Hopgood appears to be alluding to is the concern of adherents of uppercase ‘Human Rights’ with attempts to transform human rights law too rapidly and in ways which depart too dramatically from existing human rights law (a phenomenon that is often referred to as ‘rights inflation’).

According to Clément, ‘rights inflation’ can take place when judges or administrative tribunals interpret the law, legislatures amend constitutions or enact statutes, social actors frame their grievances in the language of rights, and public discourse surrounding human rights changes.<sup>394</sup> Concerns about ‘rights inflation’ have a relatively long history. As early as 1973, Cranston argued that there was a danger of rendering rights meaningless unless rights claims were restricted to ‘minimal rights’.<sup>395</sup> A decade later in 1984, the international law scholar Alston contended that the proliferation of new rights would likely contribute to a serious devaluation of the human rights currency.<sup>396</sup> More recently, the philosopher Griffin argued that the widespread use of rights-talk has made it a ‘debased’ rhetoric.<sup>397</sup> Even Chinkin, who is sympathetic to the need for new rights – remarking that ‘[i]f new rights cannot be

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<sup>394</sup> Dominique Clément, "Human Rights or Social Justice? The Problem of Rights Inflation " *The International Journal of Human Rights*, Vol. 22, No. 2 (2018).

<sup>395</sup> Maurice Cranston, *What Are Human Rights?* (New York: Basic Books, 1973), 82. Cited in *ibid.*

<sup>396</sup> Philip Alston, ‘Conjuring up New Human Rights: A Proposal for Quality Control’, *American Journal of International Law* 78, no. 3 (1984): 614. Cited in *ibid.*

<sup>397</sup> James Griffin, *On Human Rights* (New York: Oxford University Press, 2008), 92–3. Cited in *ibid.*

accommodated, there is a danger of human rights failing to meet changed demands for individual freedom'<sup>398</sup> – has cautioned that ‘assertions of new rights that are not fully defined, are not framed within legal instruments, are not widely accepted and are constantly denied can trivialize the entire human rights venture’.<sup>399</sup>

Examples of human rights advocates who are concerned about ‘rights inflation’ and maintaining the integrity of international human rights law are not difficult to come by. Claeys has identified a group of right to food defenders who ‘share[...] the fear that the proliferation of new rights claimed by peasant movements [will] compromise the strength of the human rights framework’.<sup>400</sup> She refers to these actors as ‘textualist’ as they feel that their ‘legitimacy [is] tied to their ability to refer to existing texts, and codified international norms’.<sup>401</sup> In order to advance their agenda, some ‘textualist’ actors ‘highlight[...] the advantages of the right to food and the weaknesses of food sovereignty’ (the non-legalised right claimed by Via Campesina).<sup>402</sup> There is clearly some measure of overlap between Hopgood’s uppercase ‘Human Rights’ and Claeys’ ‘textualist’ approach to the right to food. The scholar and international human rights law activist Windfuhr, who has worked with the peasant movement Via Campesina, is another example of a human rights defender who is concerned about rights inflation. Windfuhr has been at pains to emphasise that the right to food is a *legal* concept whereas the right to food sovereignty is ‘only’ a *political* concept. He has called for ‘[t]h two levels of rights language [be] differentiated in order not to lower the standards

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<sup>398</sup> Christine Chinkin, "International Law and Human Rights," in *Human Rights Fifty Years On: A Reappraisal*, ed. Tony Evans (Manchester: Manchester University Press, 1998).

<sup>399</sup> *Ibid.* 113.

<sup>400</sup> Claeys, *Human Rights and the Food Sovereignty Movement - Reclaiming Control*.118.

<sup>401</sup> *Ibid.* 117-118.

<sup>402</sup> *Ibid.* 118.

of recognition that the right to adequate food has already reached in international law'.<sup>403</sup>

While Section 4.2 lent support to Stammers' claim that pre-legalised conceptions of human rights can be radical in economic terms, Section 4.3 suggested that Stammers' claim may need to be qualified as actors engaged in uppercase 'Human Rights' are likely to resist the formulation of conceptions of rights that they deem to be 'too' radical, in the sense that they depart too far from existing human rights law norms. Granted, when Stammers talked about the development of pre-legalised conceptions of human rights, he had grassroots social movements in mind and grassroots social movements are unlikely to be engaged in uppercase 'Human Rights' work. However, international NGOs which may be committed to the global project to constitutionalise human rights law are increasingly getting involved in the work of contemporary social movements.<sup>404</sup> This complicates the picture somewhat as it is possible that uppercase 'Human Rights' actors working with social movements composed of lowercase 'human rights' actors may bring their influence to bear on the latter and dissuade them from advancing radical conceptions of rights. That being said, it must also be acknowledged that uppercase 'Human Rights' actors do not need to support dramatic changes to international human rights law norms in order to be able to lend their backing to far-reaching changes to the social order. They can do this by pushing for policy reforms which are aimed at the realisation of human rights. Indeed, as discussed in Chapter 2, securing policy reforms is another important objective of international human rights

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<sup>403</sup> Michael Windfuhr and Jennie Jonsen, "Food Sovereignty: Towards Democracy in Localized Food Systems," (Warwickshire: ITDG Publishing, 2005). 13.

<sup>404</sup> Volker Schneider, "The Global Social Capital of Human Rights Movements: A Case Study on Amnesty International," in *Private Organisations in Global Politics*, ed. K. Ronit and Volker Schneider (London: Routledge, 2013).

law actors – and one that Hopgood seems to have overlooked. Take the international lawyer Alston whose resistance to the expansion of rights in the 1980s was observed above. In his present role as the UN Special Rapporteur on Extreme Poverty and Human Rights, Alston has called out the United States of America for leading ‘the developed world in income and wealth inequality’,<sup>405</sup> and called for it to ‘acknowledge the damaging consequences of extreme inequality’<sup>406</sup> and put in place taxes in order to address redistribution.<sup>407</sup> Alston has also pressed the IMF to develop ‘a different mindset from the modified neoliberalism that currently sets the parameters of its thinking’<sup>408</sup> in order that it is able to truly contribute to efforts to combat extreme inequality and extreme poverty.<sup>409</sup>

The former UN Special Rapporteur on the Right to Food, Olivier De Schutter, also made some far reaching policy recommendations aimed at the realisation of the human right to food. For example, although he has not recognised the existence of an international ‘human right to land’, which has been claimed by peasant movements, in order to advance the fulfilment of the right to food De Schutter has urged states to ensure security of tenure for land users who do not have formal titles to their land, adopt anti-eviction laws imposing strict conditions for interference with the rights of land users and provide for the possibility of agrarian reform where land concentration is excessive.<sup>410</sup>

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<sup>405</sup> UN Human Rights Council. "Report of the Special Rapporteur on Extreme Poverty and Human Rights on his Mission to the United States of America." 4 May 2018. A/HRC/38/33/Add.1. Available at [https://digitallibrary.un.org/record/1629536/files/A\\_HRC\\_38\\_33\\_Add-1-EN.pdf](https://digitallibrary.un.org/record/1629536/files/A_HRC_38_33_Add-1-EN.pdf) [Accessed 19 Sept. 2018]. Para 3 pg. 19.

<sup>406</sup> *Ibid.* Para 3 pg. 19.

<sup>407</sup> *Ibid.*

<sup>408</sup> Para 58, pg 17.

<sup>409</sup> UN Human Rights Council. "Report of the Special Rapporteur on Extreme Poverty and Human Rights." 8 May 2018. A/HRC/38/33. Available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/127/23/PDF/G1812723.pdf?OpenElement> [Accessed 19 Sept. 2018].

<sup>410</sup> UN Special Rapporteur on the Right to Food Olivier De Schutter. "The Right to Food: Note by the Secretary-General (Transmitting to the Members of the General Assembly the Interim Report of the Special Rapporteur on

#### 4.4. The ‘Structural Conception’ of the Right to Food: Radical but Particularistic?

As explained in the introduction to this chapter, as well as linking the ‘deradicalisation’ or ‘dilution’ of pre-legalised conceptions human rights to the process of legalisation, Stammers associates the creation of ‘civic exclusions’ with the legalisation process (albeit somewhat hesitantly). This section of Chapter 4 argues that the inception of some rights exclusions can, in fact, be traced to the ‘conceptualisation stage’ of the rights-creation process.

In theory, ‘socioeconomic rights discourse transcends particular and sectorial interests’.<sup>411</sup> However, as Morris has observed, in spite of the professed universality of human rights, social struggles for human rights tend to be carried out by *particular* groups mobilising around *particular* needs for recognition and/or resources.<sup>412</sup> The exclusions created by such struggles when these have been carried out by dominant social groups have been widely documented. For example, in England, until 1832 only propertied men over 21 were allowed to vote; this subjected propertyless men and all women to a ‘rights exclusion’ as feminist and other critics have observed.<sup>413</sup> As a result, the establishment of the right to vote for propertied men actually served as a tool of civic stratification i.e. it produced *further* inequalities between dominant social groups (propertied men) and subordinate ones (women and propertyless men).<sup>414</sup>

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the Right to Food, Olivier De Schutter) A/65/281." UN General Assembly, 2010. Available at [http://www.srfood.org/images/stories/pdf/officialreports/20101021\\_access-to-land-report\\_en.pdf](http://www.srfood.org/images/stories/pdf/officialreports/20101021_access-to-land-report_en.pdf) [Accessed 9 Sept. 2018].

<sup>411</sup> Wills, *Contesting World Order?: Socioeconomic Rights and Global Justice Movements*. 80.

<sup>412</sup> Morris, "Sociology and Rights - an Emergent Field."

<sup>413</sup> For example, see Walby, "Is Citizenship Gendered?."

<sup>414</sup> See Morris, "Squaring the Circle: Domestic Welfare, Migrants Rights, and Human Rights." and Chapter 1 for further discussion of the way in which rights can create further inequalities.



In contrast to struggles for rights by dominant social groups, the potential for rights that have been claimed by subordinate groups to be particularistic and lead to the creation of exclusions has received little attention in the literature. Indeed, the creation of rights by the metaphorical ‘below’ has been viewed as a welcome and even necessary counter to the creation of rights by the metaphorical ‘above’ over the course of the last few hundred years.<sup>415</sup> However, as this section demonstrates, the formulation of conceptions of rights by subordinate groups – or, in the case at hand, by NGO activists working with and on behalf of subordinate groups – can also lead to the creation of problematic exclusions. This is because the metaphorical ‘below’ in a given social context is not necessarily a uniform group with unified interests. As with dominant groups, groups that are seen as subordinate can be situated within and themselves contain social hierarchies. In the case of Indian civil society’s *structural change* conception of the right to food, the absence of unified interests among the ‘below’ and the consequences thereof for the formulation of non-exclusionary rights became apparent when the land dimension of the *structural change* conception was developed. For reasons that can only be guessed at (several hypotheses are proposed below), the element of the *structural change* conception that addressed land focused solely on the needs of those who already *possessed* land and ignored the needs of the landless. Had this element of the *structural change* conception of the right to food been implemented, it may have created further inequalities between India’s landed and landless communities, even as it strengthened the position of India’s landed farmers vis-à-vis domestic and transnational capital.

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<sup>415</sup> Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*; De Sousa Santos and Rodriguez-Garavito, *Law and Globalization from Below - Towards a Cosmopolitan Legality*; Stammers, *Human Rights and Social Movements*.

The focus on protecting the land of those who already *possessed* land came out in the interviews with Sita and Meena, two non-members who worked with India's farmers' movements. In reference to the land issue, Sita only referred to the need to 'prevent[...] land alienation'<sup>416</sup> while Meena only made reference to opposing 'the land acquisition process that is going on globally'.<sup>417</sup> Members of the Right to Food Campaign who talked about land at interview did so at a high level of generality and it is therefore difficult to determine the precise measures that they did or did not support. For example, Nalini stated only that 'it's not a complete bill. It doesn't talk about farmers, seed, land, water'<sup>418</sup> while Madhuri Ramakrishnasway<sup>419</sup> only remarked that there needs to be a focus on the 'protection of land, forests, water, farmers, labourers etc.'<sup>420</sup>

However, the focus on preventing land *acquisitions* and not on pressing for land *redistribution* is evident in the 'aspirational' sections of key Right to Food Campaign documents which indicates that the Right to Food Campaign too supported this focus. For example, the preamble of a revised version of the 'Essential Demands' document first stipulates that 'land [...] must never be forcibly diverted away from food production [i.e. from farmers] for cash crops or industrial use' and then talks about the importance of 'equitable rights over land [...]'.<sup>421</sup> The latter statement could conceivably be interpreted as requiring land redistribution but this is not explicitly stated. The focus on preventing acquisitions rather than on securing land redistribution

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<sup>416</sup> Interview with Sita (pseudonym) on 1 September 2014, India.

<sup>417</sup> Interview with Meena (pseudonym) on 19 August 2014, India.

<sup>418</sup> Interview with Nalini (pseudonym) on 27 August 2014, India.

<sup>419</sup> Real name. Madhuri Ramakrishnasway is a leader of Jagrit Adivasi Dalit Sangathan (JADS), a tribal and Dalit Rights Collective which has been working for fourteen years in Madhya Pradesh. Advocacy organisations often come together under the banner of JADS to hold peaceful protests in order to raise awareness of the extremely poor health care for women in pregnancy and labour.

<sup>420</sup> Right to Food Campaign, "Minutes of the National Consultation on Right to Food Act."

<sup>421</sup> "Right to Food: Essential Demands."

is more evident in the Right to Food Campaign's 'model' right to food bill (titled the 'Food Entitlements Act 2009').<sup>422</sup> In this document, the Right to Food Campaign again states that 'forcible diversion and acquisition of agricultural lands' is to be prevented.<sup>423</sup> However, later in the document support for 'land allotment' to the landless *is* given mention, but only in the section titled 'protocol for responding to starvation deaths'. In other words, it was only in the most extreme of circumstances that the redistribution of land to the landless was to be considered. This section of the 'model' right to food bill stated:<sup>424</sup>

If a certain region has been diagnosed as suffering from intense hunger, the state should put in place systems of relief [...]. Some of the measures that may be relevant include [...] identifying, in consultation with the survivors [of starvation] in the family, the reasons for livelihoods denial, collapse or insecurities and assisting them to build a secure livelihood *through measures like land allotment* (emphasis added).<sup>425</sup>

Considerable debate surrounds the issue of the social composition of India's farmers' movements. Many scholars, such as Byres, Dhanagare and Lindberg argue that these movements are composed of "farmers", rather than "peasants": the former being distinguished [...] by significant market involvement, both as commodity producers and as purchasers of inputs'.<sup>426</sup> They also contend that these movements have little to say about the socioeconomic conditions and political interests of the rural proletariat

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<sup>422</sup> "Food Entitlements Act."

<sup>423</sup> Ibid. Chapter II (iii).

<sup>424</sup> Ibid. 38.

<sup>425</sup> Ibid. Schedule VIII: Protocol for Responding to Starvation Deaths, para 5. Emphasis added.

<sup>426</sup> T.J. Byres, "Preface," in *New Farmers' Movements in India*, ed. Tom Brass (Ilford: Frank Cass, 1995); D.N. Dhanagare, "The Class Character and Politics of Farmers' Movement in Maharashtra During the 1980s," in *New Farmers' Movements in India* ed. Tom Brass (Ilford: Frank Cass, 1995); Staffan Lindberg, "New Farmers' Movements in India as Structural Response and Collective Identity Formation: The Cases of the Shetkari Sanghatana and the BKU," *ibid.*

and, moreover, suggest that ‘in many instances [the former] are actually antagonistic to the latter’.<sup>427</sup> A few other scholars, however, such as Omvedt, maintain that at least some farmers’ movements, for example, Shetkari Sanghatana in Maharashtra State, are composed mainly of petty commodity producers or peasants and that their interests coincide with those of agricultural workers.<sup>428</sup> The controversy surrounding the social composition of India’s farmers’ movements cannot be resolved here. What is relatively uncontested, however, is that the situation of many of India’s farmers has deteriorated significantly over the past few decades. The loss of their land and livelihoods as a result of ‘land grabs’ is merely the latest in a series of catastrophes to hit this segment of Indian society. India’s farmers have faced growing indebtedness since the 1990s when state subsidies for agricultural inputs such as fertilisers – the use of which was originally promoted by the state as part of the Green Revolution<sup>429</sup> – were cut.<sup>430</sup> And when India dismantled trade protections for agriculture after joining the World Trade Organization in 1995, the prices of many primary products fell by up to 60 percent, leaving India’s farmers unable to sell their produce at remunerative prices.<sup>431</sup> The focus on preventing land acquisitions and ensuring the ability of farmers to ‘feed themselves using their own resources’ was, therefore, not unwarranted. However, the concurrent lack of concern about the need of the ‘long-standing landless’ for access to land is difficult to comprehend given that in India, as in most other predominantly agricultural societies, it is the landless who are *most* at risk of extreme poverty and hunger.<sup>432</sup>

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<sup>427</sup> Byres, "Preface." 11.

<sup>428</sup> Gail Omvedt, "We Want the Return for Our Sweat': The New Peasant Movement in India and the Formation of a National Agricultural Policy," in *New Farmers' Movements in India* ed. Tom Brass (Ilford: Frank Cass, 1995).

<sup>429</sup> Iva, "The Future of Food: Countering Globalisation and Recolonisation of Indian Agriculture."

<sup>430</sup> Kathy Le Mons Walker, "Neoliberalism on the Ground in Rural India: Predatory Growth, Agrarian Crisis, Internal Colonization, and the Intensification of Class Struggle," *The Journal of Peasant Studies*, Vol. 35, No. 4 (2008): 557-620.

<sup>431</sup> Ibid.

<sup>432</sup> Tim Hanstad, T. Haque, and Robin Nielsen, "Improving Land Access for India's Rural Poor," *Economic and Political Weekly*, Vol. 43, No. 10 (2008): 49-56.

Landless households in India constitute 50 to 60 percent of the rural population and the vast majority of this social group are members of India's 'Scheduled Castes' or 'Scheduled Tribes', including Dalits. As such, they are 'the lowest of the low' in status terms as well as in economic terms.<sup>433</sup> The situation of India's Dalits illustrates the way in which 'economic disadvantage and cultural disrespect [can be] entwined with and support one another'.<sup>434</sup> In India, acquiring land 'is not simply a material benefit, but also a symbolic statement of social prestige for dalits who have traditionally been denied access to land';<sup>435</sup> acquiring land thus leads to an enhancement of their moral standing. This point was emphasised by Narendra, a Dalit rights activist working for a member organisation of the Right to Food Campaign. He explained that in India 'land is associated with dignity and identity' and that therefore, if a Dalit is provided with land, 'a lot of changes [take place]. First, his livelihood will be ensured. His dignity [...]; His identity will be maintained there. His identity will be withstood. He will never [be] call[ed] as a landless. Stigmatised as landless [...]'.<sup>436</sup>

Most of India's landless households are forced, in the absence of other employment opportunities,<sup>437</sup> to eke out a living from casual manual labour. Their condition calls to mind Benton's contention that 'capitalist employment relations in which workers are subject to the dictatorial authority of the employer' produce 'a form of economic inequality that implies not just differential access to resources of various kinds, but also

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<sup>433</sup> Estimates on the percentage of rural households that are landless can be found in the following studies: Chakravorty. Amit Basole and Deepankar Basu, "Relations of Production and Modes of Surplus Extraction in India: Part I-Agriculture," *Economic and Political Weekly*, Vol. 46, No. 14 (2011): 41-58.

<sup>434</sup> Nancy Fraser, "From Redistribution to Recognition? Dilemmas of Justice in a 'Post-Socialist' Age," *New Left Review*, Vol. 212 (1995): 68-93. 69.

<sup>435</sup> Walker, "Neoliberalism on the Ground in Rural India: Predatory Growth, Agrarian Crisis, Internal Colonization, and the Intensification of Class Struggle." 603.

<sup>436</sup> Interview with Narendra (pseudonym) on 8 September 2016, India.

<sup>437</sup> Patnaik, *The Republic of Hunger and Other Essays*; "Food Stocks and Hunger: The Causes of Agrarian Distress."

relations of structured domination and subordination'.<sup>438</sup> This view on the nature and effects of capitalist employment relations in the industrialised West has been critiqued over the past decades. However, the situation of India's landless Dalits brings Benton's arguments into sharp relief. Numerous cases in which Dalits have been subject to the coercive force of their employers have been documented. For example, to prevent Dalits from putting themselves forward as candidates for *panchayat* (village council) elections, landowners have threatened to impose economic sanctions against entire Dalit communities; sanctions which include the loss of their jobs as agricultural labourers.<sup>439</sup> It is in this context that Dalit communities have been campaigning for access to land since Independence.

Why was so little attention paid to the need of the landless for land? There is no simple answer to this question; however, several hypotheses can be put forward, all of which emphasise the fact that in India there is no cohesive, unified 'below'.

Narendra, the Dalit rights activist quoted above, attributed the neglect of the issue of land redistribution to the caste composition – and resultant social attitudes – of India's NGO workers, including Right to Food Campaign activists. While Narendra strongly supported the Right to Food Campaign's work on social protection, viewing it as transformative for the poorest of the poor, he believed that when it came to land redistribution, 'these upper-caste groups will oppose that; the right to food group, all those Brahmanical-led groups, they will oppose us!' He elaborated:

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<sup>438</sup> Benton, "Do We Need Rights? If So, What Sort?." 26.

<sup>439</sup> For example, see Walker, "Neoliberalism on the Ground in Rural India: Predatory Growth, Agrarian Crisis, Internal Colonization, and the Intensification of Class Struggle."

See, all those, the civil society groups, they are very dual in their character. Very dual and very cynical in their approach [...] [T]hey of course work for the development of the Dalits and Adivasis in their approach. But [...] when the land issue comes, they say: ‘No, it’s not a priority’ [...]. [T]hey will say: ‘See, there are a lot of other avenues [...] coming up where Dalit and Adivasi [...] can be part of that, but [we do not need to] talk about land [...] because agriculture is no more a viable option for livelihood’. This is the argument they give. [...] Because [...] they upper castes have never been landless in our country. They are the landlords. They are the kings. So they never felt the pain. They never felt the pain of landlessness. They never felt the pain of humiliations. They never felt the pain of marginalisation and discrimination.<sup>440</sup>

Narendra concluded the point he was making by recalling an instance in which he had been called on to mobilise Dalits and Adivasis to attend a demonstration against land acquisitions.

They called us, okay, [and said] some rally is taking place, in Delhi [...]. We said: ‘But so what? Why you are calling us?’ [He said]: ‘Call the Dalit and Adivasis to be part of that mass movement’. We said: ‘No. Why should we call Dalit and Adivasis? If lands are being taken, is this land *ours*? We have been landless for the centuries. And we have seen how the landlords have treated our own Dalit and Adivasi brothers in our own village. Let them to take their land!’<sup>441</sup>

The distinction that Narendra draws between the interests of the landless and the landed leads into the second hypothesis as to why the *structural change* conception of the right to food neglected landlessness as an issue. This hypothesis relates to what Byres has

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<sup>440</sup> Interview with Narendra (pseudonym) on 8 September 2016, India.

<sup>441</sup> Ibid.

called ‘the thesis of “peasant” unity’.<sup>442</sup> This thesis maintains that whatever divisions exist in rural society, these are wholly secondary to the exploitation of the ‘peasantry’ by a predatory state; and that if the demands of farmers’ movements were met, agricultural labour too would benefit, since the demand for labour would rise and wages would increase. There is, as Byres has remarked, ‘an undifferentiated rural universe’.<sup>443</sup> This thesis did not hold sway among Right to Food Campaign members. Indeed, numerous campaign members made reference to the fact that their constituents had different interests to those of India’s farmers’ movements.<sup>444</sup> However, some of the non-members – who, according to one informant contributed to the development of elements of Right to Food Campaign documents that addressed structural issues – *may* have believed in the thesis of ‘peasant unity’. After discussing the needs of India’s farmers, Sita, for example, remarked that: ‘[And] for a daily wage worker, if a farmer cannot realise good prices, there is no hope that she can pay her worker, you know, good wages’.<sup>445</sup> Sita did go on to acknowledge that ‘[n]ot that they are all, you know, waiting there with kind hearts to do that. There is a lot of exploitation that is happening of course’.<sup>446</sup> Meena, another non-member working with farmers’ movements also commented – when probed – on the exploitation of labourers: ‘There is no denying [that the farmers and the labourers have different interests]. And farmers are also exploiting the labour. That is very clear. They have also not been paying the kind of wages that they should pay to labour’.<sup>447</sup> Neither Meena nor Sita, however, remarked any further on this issue or sought to integrate the issue of labour exploitation into their vision for advancing the right to food. In fact, Meena even subsequently remarked that

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<sup>442</sup> Byres, "Preface." 2.

<sup>443</sup> *Ibid.* 2

<sup>444</sup> Three interviews made reference to the fact that they were reluctant to work with India’s farmers’ movements in part because they were regressive on matters related to class, caste and gender.

<sup>445</sup> Interview with Sita (pseudonym) on 1 September 2014, India.

<sup>446</sup> *Ibid.*

<sup>447</sup> Interview with Meena (pseudonym) on 19 August 2014, India.



when the National Rural Employment Guarantee Bill was being drafted, she lobbied (unsuccessfully) for a provision stipulating that the public works to be provided under the act be put on hold ‘for those three months [per year] when we require harvesting and sowing [as this] requires a lot of labour’, as she was concerned about the availability of farm labour during these periods.<sup>448</sup> This was a very ‘farmer centric’ position to take. One of the goals of the National Rural Employment Guarantee Act was to *reduce* agricultural labourers’ economic dependence on farmers by providing alternative employment opportunities at any time of the year thereby increasing the bargaining power the of labourers vis-à-vis potential employers.<sup>449</sup>

The third and final hypothesis as to why the issue of landlessness was neglected – which is again relevant only to non-members working with farmers’ movements – is simply that they were representing the needs and interests of their constituents. And their constituents were farmers, not landless agricultural labourers. Further empirical research is needed to substantiate this, and, indeed, the other hypotheses. However, even as a supposition, the third hypothesis challenges the presumption that human rights ‘from below’ will somehow circumvent the problems associated with human rights ‘from above’.

#### **4.5. Summary**

Chapter 4 analysed the ‘conceptualisation stage’ of the creation of India’s right to food act. The primary objective of this chapter was to evaluate the contention that pre- or non-legalised conceptions of human rights can be more economically radical and

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<sup>448</sup> Ibid.

<sup>449</sup> Interview with Anil (pseudonym) on 27 August 2016, India; Interview with Krishna (pseudonym) on 13 August 2014, India. Anil and Krishna were both involved in the campaign for the National Rural Employment Guarantee Act.

inclusive than human rights *law*. The findings presented in this chapter supported the first part of this claim: that is, the claim that pre- or non-legalised conceptions of human rights can be more radical in economic terms than extant law. However, drawing on Hopgood's typology of approaches to human rights, Chapter 4 also sought to qualify this claim. It argued that some actors – those engaged in uppercase 'Human Rights' – are likely to resist the development of conceptions of human rights that are 'too' radical (in the sense that they depart too radically from the law) for fear of undermining the integrity and status of international human rights law. Finally, Chapter 4 demonstrated that the creation of rights exclusions can be – and, indeed, are likely to be when human rights emerge out of social struggles engaged in by particular groups – associated with the 'conceptualisation stage' of the human rights rights-creation process. The secondary objective of this chapter is to lay the groundwork for the analysis presented in the forthcoming chapters. By describing and analysing Indian civil society's pre-legalised conceptions of the right to food in some detail, Chapter 4 also facilitates an analysis of how and why these conceptions developed and changed during the legalisation process (discussed in Chapter 5 and Chapter 7).

The findings presented in this chapter raised numerous issues that are relevant to contemporary debates regarding the potential and limitations of human rights as a tool with which to improve the lives of the world's poor, as well as to the literature on 'human rights in practice' more broadly. The first issue pertains to the question of whether rights can be formulated in a manner which reduces the likelihood of the least advantaged experiencing a 'deficit'. Chapter 4 also raises interesting questions about the potential for tensions to arise between actors engaged in uppercase 'Human Rights' and actors engaged in lowercase 'human rights', especially when both are engaged in

the creation of new human rights law norms. Finally, Chapter 4 raises concerns about whether conceptions of rights that emerge from concrete struggles engaged in by particular groups – or, in the case at hand, by NGOs working with particular groups – can be formulated in a manner which is not particularistic and therefore will not lead the creation of civic exclusions (and further inequalities between already unequal social groups).

## Chapter 5: From Conceptions of Human Rights to Concrete Claims

### 5.1. Introduction

In the previous chapter, we saw that pre-legalised human rights can be conceived of as *individual entitlements* to social protection as well as – at least where lowercase ‘human rights’ is concerned – radical, *structural changes* in the areas of control over and access to productive resources, and international trade. Earlier in the thesis, we also discussed the fact that numerous scholars have attributed the conservatism or ‘minimalism’ of human rights law to the nature of the legalisation process. More specifically, these scholars contend that pre-legalised conceptions of human rights are ‘diluted’ or ‘deradicalised’ *during and as a result of* the legalisation process because of the way in which formal institutions such as courts and legislatures tend to reflect and reproduce prevailing relations of power.<sup>450</sup> The extent to which Indian civil society’s pre-legalised rights claims were, in fact, ‘diluted’ during and as a result of the legalisation process will be analysed later in the thesis.<sup>451</sup> However, this chapter demonstrates that pre-legalised human rights are not *only* diluted during and as a result of the legalisation process. In the case of the Right to Food Campaign’s battle to secure a right to food law, the more radical conceptions of right to food were filtered out *before* the ‘legalisation stage’, during what will be referred to here as the ‘claim-formulation stage’ of the human rights law-creation process. The ‘claim-formulation stage’ entails translating *conceptions* of human rights into concrete *claims* that will be made of the state (or another duty-bearer). This ‘stage’ of the human rights-law creation process

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<sup>450</sup> Please see Chapter 1 for further discussion of the ‘legalisation thesis’.

<sup>451</sup> Please see Chapter 7.

appears to have received little attention in the literature to date,<sup>452</sup> although Bob has documented a similar phenomenon, but one that takes place when ‘aggrieved groups’, such as people with disabilities and LGBT communities, dilute their ‘conceptions’ of rights in order that they may be accepted by powerful gatekeeper NGOs (rather than, as in the case of the Right to Food Campaign, the state).<sup>453</sup>

Contestation over what human rights mean or should mean is often associated with the presence of ideological differences. As noted earlier, some social actors’ understandings of human rights are infused with social democratic, liberal or neoliberal thought, and as a result, these actors seek to shape human rights in the image of those ideologies.<sup>454</sup> However, in the case of the Right to Food Campaign, the more far-reaching conceptions of the right to food were excluded from the campaign’s claims primarily for pragmatic rather than ideological reasons.

The rights-claimants themselves played a relatively minor role in the process of translating the various conceptions of the right to food into concrete claims, a finding which lends weight to concerns about the ability of NGOs to ‘democratise’ human rights law.<sup>455</sup> This finding also has implications for the growing body of literature on the development of human rights ‘from below’, much of which fails to examine the internal dynamics of coalitions that attempt to shape human rights law (many of which

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<sup>452</sup> Sara Bailey, "Beyond Radical Rhetoric: Translating Structural Conceptions of the Right to Food into Concrete Demands for Change," *The International Journal of Human Rights*, Vol. 22, No. 2 (2018): 133-54.

<sup>453</sup> Bob, *The International Struggle for New Human Rights* 10.

<sup>454</sup> Ife, *Human Rights from Below: Achieving Rights through Community Development*; Stammers, *Human Rights and Social Movements*; Neier, Aryeh. "Misunderstanding Our Mission" In *OpenGlobalRights*. Available at <https://www.opendemocracy.net/openglobalrights/aryeh-neier/misunderstanding-our-mission>: openDemocracy [accessed: 3 Mar. 2018].

<sup>455</sup> Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*.

include NGOs and social movements as well as rights-claimants).<sup>456</sup> And yet, in the absence of an examination of the internal dynamics of civil society coalitions, how do we know which coalition actors exerted the most influence over the direction of events?

Moreover, in spite of the existence of formally democratic consultation processes aimed at securing the input of Right to Food Campaign members (mainly NGOs, as noted in Chapter 2), a relatively small group of campaign leaders appears to have exerted a disproportionate level of influence over how to translate the conceptions into claims. This brings to mind Robert Michels's thesis that all social organisations will eventually develop oligarchical leadership, irrespective of whether they have put in place formally democratic practices.<sup>457</sup>

Chapter 5 is set out as follows. Section 5.2 lays out the three 'schools of thought' that emerged in respect of how to translate the various conceptions of the right to food into concrete claims (the claims were referred to by the campaign as their 'Essential Demands'). Section 5.3 analyses how the Right to Food Campaign arrived at the decisions that it did, while Section 5.4 discusses the various factors that influenced the campaign's decisions. A summary is provided in Section 5.5.

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<sup>456</sup> Ibid.; De Sousa Santos and Rodriguez-Garavito, *Law and Globalization from Below - Towards a Cosmopolitan Legality*.

<sup>457</sup> Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy (1915)*.

## 5.2. Three Schools of Thought

Intra-civil society debate regarding which claims to make in respect of the content of the proposed right to food law played out until as late as 2012, well after the legalisation process had got underway.<sup>458</sup> According to Nidhi, the campaign members who had called on the Congress Party to include a pledge for a right to food law in their manifesto prior to the 2009 parliamentary elections had not anticipated the level of debate that would take place within the campaign.<sup>459</sup> This debate caused considerable tension. According to Poonam, a high profile campaign leader: ‘[T]he sharpest debates, [...] [t]he most challenges, were really around whether we should at all look at the entitlements or focus on land, water, more structural causes of poverty’.<sup>460</sup> Another campaign leader, Krishna, concurred: ‘[W]e lost a lot of time, a lot of energy, a lot of emotional energy in sort of dealing with this issue. [...] [T]he campaign was, I would say, very traumatised by this whole process of arriving at the whole negotiation of the Food Security Act’.<sup>461</sup>

According to another leading member of the campaign, Pramila, three schools of thought eventually emerged: ‘So one school of thought, which was represented by Jean [Dreze], Harsh Mander and all, was basically that we focus on entitlements’, she explained.<sup>462</sup> ‘[T]here was another [school], represented by Madhuri Krishnaswamy<sup>463</sup> and all, which basically said that you cannot, I mean, you should not, accept this act

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<sup>458</sup> This was confirmed by at least four interviewees.

<sup>459</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

<sup>460</sup> Interview with Poonam (pseudonym) on 1 August 2014, India.

<sup>461</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>462</sup> Interview with Pramila (pseudonym) on 6 September 2016, India.

<sup>463</sup> For further information about Madhuri Krishnaswamy please see note 419.

[...] until you get the land and the issue of the production and procurement'.<sup>464</sup> (This was the second school of thought). '[Then] there are people like us, me and maybe Annuradha [Talwar] (a social justice and human rights activist), who believed that we have to take some part of the entitlements because [the structural concerns are] a larger issue and all battles cannot be fought under the campaign' (the third school of thought).<sup>465</sup> Pramila proceeded to explain that the third school of thought entailed focusing primarily on entitlements while at the same time making an important concession to the proponents of a structural approach. The concession was to push for a provision in the bill obligating the government to procure all of the food for the schemes from small and medium farmers around India at a remunerative price (the 'minimum support price'<sup>466</sup>) rather than importing it. This would, according to Pramila, address at least some dimensions of the rural livelihoods issue 'because [MSP] is where it starts'.<sup>467</sup>

In the end, the third school of thought – referred to within the campaign as 'entitlements and MSP' – won out. According to Sonia, a 'non-member' who worked with India's farmers' movements, the decision to include MSP in the campaign's demands came as late as '2012, I would say; or a little earlier'.<sup>468</sup> For activists working with India's farmers, this was an important development. Sonia explained:

[W]e are always a sympathiser, a supporter of the Right to Food Campaign and we have always taken a similar line, but our association with Right to Food Campaign

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<sup>464</sup> Interview with Pramila (pseudonym) on 6 September 2016, India.

<sup>465</sup> Ibid.

<sup>466</sup> Please see Section 4.2.2 for further information about the MSP system.

<sup>467</sup> Interview with Pramila (pseudonym) on 6 September 2016, India.

<sup>468</sup> Interview with Sonia (pseudonym) on 5 August 2014, India.



was, I would say, not very firm and straightforward in that sense, and the reason being that the kind of positions they were taking initially on the trade issue was a bit problematic because their position [...] was that we need to feed people irrespective of where the food was coming from and this is a problematic position because, I mean, they were not focusing on the local production.<sup>469</sup>

She continued: [W]e almost had sometimes, you know, a kind of an argument on this [...] But fortunately, Right to Food Campaign has now completely changed their position and they are very much against imports.<sup>470</sup>

The Right to Food Campaign also decided to make reference to the structural issues in their campaign documents in order to avoid creating the impression that the right to food was limited to an obligation to provide individual entitlements to social protection.<sup>471</sup>

In a sense, therefore, the Right to Food Campaign formulated two types of claims: ‘concrete claims’, centred on the obligation of the state to provide individual entitlements on a universal basis and a set of what could be thought of as ‘rhetorical claims’, focused on structural reforms in the areas of control over and access to productive resources, and international trade. The concrete claims were those that the campaign actually intended to secure whereas the rhetorical claims were idealistic.

The concrete claims were laid out in very specific terms, to the number of grams of

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<sup>469</sup> Ibid.

<sup>470</sup> Ibid.

<sup>471</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

protein and fat to be provided through particular programmes.<sup>472</sup> In contrast, the rhetorical claims were articulated at a high level of generality; laid out only in broad brushstrokes.<sup>473</sup> The details of the rhetorical claims can, perhaps, best be gleaned from the preamble to the final version of the campaign's 'Essential Demands' document. In the preamble, the campaign asserts that '[a]ll people residing in [...] [India] have a fundamental right to be free from hunger and malnutrition'. It then proceeds to contend that ensuring the right to food/the right to be free from hunger requires 'sufficient availability of food' on the one hand and 'economic access' and 'social access' on the other. Ensuring availability, according to this document, requires: the 'strengthening of sustainable agricultural production systems, with special focus on the small rain fed farmer'; an agreement 'that land and water must never be forcibly diverted away from food production [...]'; and the establishment of 'effective systems of minimum support prices, price stabilisation, [...] as well as strict regulation of speculation and trade'. Economic access, meanwhile, the preamble asserts, entails ensuring 'adequate employment and wage levels, the protection of existing livelihoods, and equitable rights over land, water and forests'. And finally social access requires 'that barriers of gender, caste, disability, stigma, age etc. must all be overcome'.<sup>474</sup>

The campaign's rhetorical claims can, arguably, be seen as having an 'expressive dimension' which involves the construction of values and norms, potentially making the Right to Food Campaign an agent of wider sociocultural change. As Morris has observed, the expressive role of rights was foreseen as early as the 1950s by Marshall who argued that one of the functions of an inclusive regime of (citizenship) rights lay

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<sup>472</sup> Right to Food Campaign, "Food Entitlements Act."

<sup>473</sup> Ibid.

<sup>474</sup> "Right to Food: Essential Demands."

in the conferral of equal status and the disassembling of status distinctions.<sup>475</sup> In this sense, the extension of equal citizenship rights was seen as a statement of equal social worth which could potentially offset material inequality [...].<sup>476</sup> At the same time, Marshall remained aware that class discrimination and socioeconomic inequalities could prevent the least advantaged from being able to exercise their rights i.e. he foresaw the dangers that the poorest would experience a rights deficit.<sup>477</sup>

### 5.3. The Decision-Making Process: Democratic or Oligarchical?

Nash has cautioned against assuming that NGOs 'are addressing the demands or needs of the "common people" by developing [...] human rights law given that we know so little about how [NGOs] are linked to the grassroots [...].'<sup>478</sup> Although Nash makes this point in relation to international human rights law, her point is also applicable to domestic law. Balakrishnan, in the context of his work on the way in which Third World social movements have shaped international human rights law, has also expressed scepticism about the ability of NGOs to 'democratise' human rights, arguing that the "NGOization" of civil society discourse is problematic for several reasons [...] and essentially misses the radical potential of a social-movement perspective to transform international law'.<sup>479</sup>

Nash and Balakrishnan's cautionary remarks are relevant here, at least in relation to the Right to Food Campaign; the non-member NGOs will be discussed separately below.

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<sup>475</sup> Lydia Morris, "Sociology and the Two Faces of Human Rights," *Sociology Compass*, Vol. 4, No. 5 (2010): 322-33.

<sup>476</sup> Ibid.

<sup>477</sup> Ibid.

<sup>478</sup> Kate Nash, "Human Rights, Movements and Law: On Not Researching Legitimacy," *Sociology*, Vol. 46, No. 5 (2012): 797-812. 803.

<sup>479</sup> Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*. 258.

Although the conceptions of the right to food discussed in the previous chapter were shaped to some degree by campaign members' lived experiences working with poor and marginalised communities, explicit consultation with those communities about the type of statute that they wanted to see enacted seems to have been rare. The position of some campaign members regarding which *claims* to put forward also seems to have been shaped by their experiences working with rights. Anil, for example, a member of the campaign's leadership explained his support for an entitlements-centred statute as follows: '[...] I feel it's *so* important for poor people. I mean, if you go around and speak to poor people about [the entitlements], for them it's *so* important'.<sup>480</sup>

It was difficult, however, to identify instances in which the rights-claimants were explicitly consulted about the form that the proposed statute should take. Only one interviewee, Shoma, talked about discussing 'every draft demand [with] the collectives' that her organisation worked with.<sup>481</sup> Other interviewees, when probed on this issue, were largely silent. The only informant to discuss this issue in any depth was Nidhi. And in Nidhi's experience, explicit consultation with the rights-claimants was rare. She explained:

[...] but to the extent that there are a handful of us who have been spending time [with] and trying to understand their [the rights-claimants'] point of view, their input is, is [pause]; and it's hard for [pause]; I mean it's true that I appropriate their sort of knowledge and present it as my own [laughs]; but I think it would work like that. It's very rare in India for a NREGA worker to be on a policy-making committee.<sup>482</sup>

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<sup>480</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

<sup>481</sup> Interview with Shoma (pseudonym) on 14 August 2014, India.

<sup>482</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

Why did consultation with the rights-claimants fail to take place? According to Nidhi, social attitudes had some role to play:

[...] I can understand that the government doesn't want to sit with poor people for policy-making purposes but those inequalities are reflected in the Right to Food Campaign structure. For the longest time, they were all upper class, super privileged, all urban, English speaking, quite often women. I think it's problematic. I mean if even the campaigns can't be democratic and inclusive and get rid of their biases, it's just not on. And they could learn as much, if, you know, people from the ground were much more part of it.<sup>483</sup>

The way in which 'non-member' activists working with India's farmers' movements formulated their proposed claims appears to differ from that of member NGOs. As with the Right to Food Campaign members, the non-members do not appear to have explicitly consulted the farmers' movements they worked with.<sup>484</sup> However, the proposals of the non-members mirror the stated demands of those movements which have long been calling for restrictions on trade, and secure access to and control over productive resources.<sup>485</sup> The proposals of the non-members likely mirror the demands of farmers' movements because they see their mandate, at least in part, as supporting those movements. This is the impression the non-member Sonia gave when describing her NGO's relationship with the Indian chapter of Via Campesina:

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<sup>483</sup> Ibid.

<sup>484</sup> None of the 'non-members' who worked with India's farmers movements who were interviewed for this thesis made reference to discussing the right to food bill with farmers' movements.

<sup>485</sup> See, for example, the websites of some of the key Indian farmers' movements: <https://viacampesina.org/en/tag/india/> (accessed: 12 Mar. 2018); <http://krrshrc.com/> (accessed 12 Mar. 2018); <http://www.bkua.co/> (accessed: 12 Mar. 2018).

‘[...] as a civil society group we work closely with some of the groups like Via Campesina farmers and their position is very much against imports; they are very much against the WTO and the whole free trade regime, so we always supported Via Campesina on that position.’<sup>486</sup>

What about the role played by Right to Food Campaign members in deciding on the campaign’s claims? According to several interviewees, the process leading to the decision about which claims to make was democratic. Jayati, an active campaign member from the south of India stated that the campaign’s:

demands are discussed widely, you know? Like every state chapter tries to debate on those demands from the grassroots level, take it to the district level, you know, and build the campaign from the grassroots [...]. Consensus is built, but there’s no imposition [...].<sup>487</sup>

There does appear to have been some sort of formal consultation process. Poonam, a member of the campaign’s leadership talked about the difficulties associated with ensuring that the draft demands could ‘fit into the two pages’ as the document ‘has to go to many people’.<sup>488</sup> In addition, other interviewees talked about going back to NGOs in their states to discuss the proposed claims.<sup>489</sup>

Lending weight to the contention that the decision-making process was democratic is the fact that many campaign members saw the Right to Food Campaign itself as a

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<sup>486</sup> Interview with Sonia (pseudonym) on 5 August 2014, India.

<sup>487</sup> Interview with Jayati (pseudonym) on 25 August 2014, India.

<sup>488</sup> Interview with Poonam (pseudonym) on 1 August 2014, India.

<sup>489</sup> Interview with Malika (pseudonym) on 4 September 2016; Interview with Shoma (pseudonym) on 14 August 2014, India.

democratic entity. Jayati, the campaign member from India's south quoted above was at pains to stress that within the campaign 'there is no hierarchy; there is no president, secretary, treasurer and all that. So it's just a core group that functions [and] all are extremely nice people'.<sup>490</sup> The 'core group' referred to by this and other interviewees comprised the more active members of the Right to Food Campaign's 'Steering Group' and a number of other high profile activists. Shoma also concurred that the campaign was democratic. She said that it was the 'most democratic I have ever seen [...]; every campaign [member] has had a voice'.<sup>491</sup> Even Meena, a non-member and critic of the campaign's approach to the right to food statute remarked: 'I completely agree [that the campaign is democratic]. That's why I'm saying they invited me to come and speak [at their annual convention]'.<sup>492</sup>

The Right to Food Campaign may well have functioned in a formally democratic manner. However, the institution of democratic processes does not necessarily lead to an equal distribution of influence. Many organisations with formally democratic practices have been found to have oligarchical leadership, an observation famously made by Robert Michels in his 1911 work, *Political Parties*.<sup>493</sup> In this work, Michels argued that the domination by the leadership over society and popular organisations – including in respect of determining policy – was an intrinsic part of bureaucracy or large-scale organisation, with the sheer problem of administration necessitating bureaucracy.<sup>494</sup> He referred to this as the 'iron law of oligarchy'.<sup>495</sup> Michels analysed this tendency in relation to the functioning of political parties but the logic of his

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<sup>490</sup> Interview with Jayati (pseudonym) on 25 August 2014, India.

<sup>491</sup> Interview with Shoma (pseudonym) on 14 August 2014, India.

<sup>492</sup> Interview with Meena (pseudonym) on 19 August 2014, India.

<sup>493</sup> Michels, *Political Parties: A Sociological Study of the Oligarchical Tendencies of Modern Democracy* (1915).

<sup>494</sup> *Ibid.*

<sup>495</sup> Seymour Martin Lipset, *Revolution and Counterrevolution: Change and Persistence in Social Structures* (London: Routledge, 2017). 415.

argument is relevant to other entities such as social movements or, indeed, NGO coalitions.<sup>496</sup> Michels' contention was based on the fact that the leadership of a social organisation possesses resources which give it 'an almost insurmountable advantage over members who try to change policies'.<sup>497</sup> These resources include 'superior knowledge' and 'control over the formal means of communication' such as the ability to 'command an audience'.<sup>498</sup>

It is indisputable that many Right to Food Campaign members supported the decision to focus on 'entitlements' or 'entitlements and MSP'.<sup>499</sup> At the same time, there is evidence to suggest that decision-making within the campaign was more oligarchical than democratic. Two campaign members and two campaign observers ('non-members') who participated in consultation meetings in the 2009 to 2011 period argued that at the end of the day it was a small group of campaign leaders who decided which claims to make. Raja, one of the two campaign members who made this point explained:

See, in my opinion, there are two to three people in the campaign who were more [the] deciding factor. [...] [I]nitially there was Colin Gonsalves,<sup>500</sup> who is a lawyer, then there is Harsh Mander who is one of other leader, Kavita Srivastava, Jean Dreze and a few others [...] and one was Mr. N.C. Saxena, who was a former secretary of the government of India, so among them, it was like, you know, they decided. Of course

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<sup>496</sup> Steven M Buechler, *Understanding Social Movements: Theories from the Classical Era to the Present* (Boulder, Colorado: Routledge, 2016).

<sup>497</sup> Lipset, *Revolution and Counterrevolution: Change and Persistence in Social Structures*. 415.

<sup>498</sup> Ibid. 415.

<sup>499</sup> At least ten Right to Food Campaign members interviewed for this study explicitly supported the 'entitlements' or entitlements and MSP' approach.

<sup>500</sup> Colin Gonsalves was a key Right to Food Campaign leader. However, he supported taking a *structural change* approach to the right to food.



they were more democratic, but this democracy you know very well everywhere. In the West or the East also. When you decide everything and then we approve.<sup>501</sup>

Drawing on Michel's theory, the group of campaign leaders referred to by Raja had access to a number of resources that were not readily accessible to the campaign's rank and file. One of these was control over the drafting and distribution of internal documents. The above group was able to put together and circulate the first draft of the proposed 'Essential Demands' (which, as noted earlier, consisted solely of entitlements-related claims) and organise consultation meetings before the proponents of a structural change-oriented statute could organise themselves and formulate an alternative position. The leadership was also able to 'command an audience' with ease at the various consultation meetings. Three interviewees – only two of whom knew each other – shared similar recollections of these events. In explaining why the Right to Food Campaign decided to focus on entitlements, Nalini, a campaign member from the south of India recalled:

[T]here are some, you know, very strong groups which said, let us talk about entitlements first, there is nothing written anywhere regarding the people's food security [...]; at least today the government is ready to think about food security [...]; so whatever is coming, let us take it first, we can build on it [...].<sup>502</sup>

Two non-members had comparable recollections. The first, Sita, asserted: '[O]ne has seen, you know, some of them, I don't want to name names, very clearly telling the others that, "look, we have all the time in the world; once we get even a minimal bill

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<sup>501</sup> Interview with Raja (pseudonym) on 23 August 2016, India.

<sup>502</sup> Interview with Nalini (pseudonym) on 27 August 2014, India.

passed, we can keep pushing for other things.”<sup>503</sup> Although she vehemently disagreed with this approach, she wasn’t unsympathetic to it: ‘[I]n fact, the kind of people who were taking that position, they were [pause]. I mean, I don’t criticise them for that kind of position [...] because they were more concerned about feeding the people; feeding the hungry’.<sup>504</sup> The other non-member, Meena, was more critical: ‘[It was] the same people [who took the decisions]. The same people. The same coterie of five, six, seven people at the top and the Right to Food Campaign which is in awe of these personalities and they will all endorse what has been said by these five, six people’.<sup>505</sup>

The format of one of the consultation meetings arranged to discuss the ‘Essential Demands’ supports the validity of the recollections recounted above. In the consultation meeting held on 11 July 2009, the presentations that preceded the ‘open discussion’ were made by the group of campaign leaders – i.e. ‘the core group’ – referred to above: Anuradha Talwar, Colin Gonsalves, Biraj Patnaik, Jean Dreze, Harsh Mander and Arundhati Dhuru. All of these individuals, with the exception of Colin Gonsalves and possibly Anuradha Talwar, supported the ‘entitlements’ or ‘entitlements and MSP’ approach.<sup>506</sup>

The above accounts also suggest that the campaign leaders who wanted to focus on entitlements-centred claims had a further resource at their disposal: moral authority. The moral authority exuded by these individuals can be perceived from the wording of the above recollections. As noted, Nalini made reference to the influence of ‘very strong groups’ while Meena talked about the membership being ‘in awe of these

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<sup>503</sup> Interview with Sita (pseudonym) on 1 September 2014, India.

<sup>504</sup> Ibid.

<sup>505</sup> Interview with Meena (pseudonym) on 19 August 2014, India.

<sup>506</sup> Right to Food Campaign, "Minutes of the National Consultation on Right to Food Act."

personalities'. It is not difficult to see why the campaign leaders referred to above may have been held in high esteem by the membership of the Right to Food Campaign. All are long-standing human rights and/or anti-poverty and social justice activists; all have national and/or international profiles, regularly appearing in the print and broadcast media;<sup>507</sup> and all are leaders in their respective professional fields, whether as economists, development professionals, human rights lawyers, academics or senior civil servants.

The campaign leaders' 'moral authority' brings to mind Lockwood's suggestion that 'civic activists' tend to be those with more 'moral and material' resources rather than less. And, of course, according to Lockwood, it is the 'moral and material' resources that they have at their disposal that they deploy in pursuit of the expansion of rights.<sup>508</sup> As discussed above, Lockwood's characterisation of civic activists corresponds closely to the composition of the Right to Food Campaign's leadership which was made up primarily of the upper and middle classes (and castes). It is perhaps not surprising, therefore, that the civic activists at the head of the Right to Food Campaign would have – whether consciously or inadvertently – used those 'moral and material' resources to influence the goals of the campaign as well as the positions of Indian decision-makers.

In contrast to Michel's, however, the author of this thesis does not view the emergence of oligarchical leadership within social organisations – or, at least within social

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<sup>507</sup> It is not difficult to find press reports authored by or covering the positions of the above group of campaign leaders. See, for example, <http://www.independent.co.uk/author/biraj-patnaik>; <https://economictimes.indiatimes.com/slideshows/people/six-ex-bureaucrats-who-influenced-the-way-government-runs/tsr-subrahmanian-75-ex-ias-former-cabinet-secretary/slideshow/25526571.cms>; <https://economictimes.indiatimes.com/news/economy/policy/india-needs-more-inclusive-active-social-policies-jean-dreze/articleshow/62496571.cms>; <http://www.dw.com/en/colin-gonsalves-whos-indias-alternative-nobel-prize-winner/a-40686709> (all accessed 12 Mar. 2018)

<sup>508</sup> Lockwood, "Civic Integration and Class Formation."

movements and NGO coalitions – to be inevitable. Numerous social movements are conscious of the ease with which a small group of actors can come to dominate the direction of events and as a result, take active steps to ensure that internal democracy is not eroded.<sup>509</sup>

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<sup>509</sup> Donatella Della Porta, "Democracy inside Social Movements," in *The Oxford Handbook of Social Movements*, ed. Donatella Della Porta and Mario Diani (Oxford: Oxford University Press, 2015).

## 5.4. The Decision to Focus on ‘Entitlements and MSP’: Pragmatism Versus Ideology

### 5.4.1. The Relationship between Rural Stagnation and Hunger

In the introduction to this chapter, I suggested that most of the resistance to including the structural issues in the ‘Essential Demands’ can be explained by pragmatic rather than ideological considerations. This is largely the case. However, contradictory understandings of the causes of and optimal solutions to hunger in India did play some role in creating the conflict that emerged over which claims to make of the government.

Some members of the campaign did not appear to be aware of the relationship between reviving the rural economy, ensuring access to productive resources, reforming international trade rules pertaining to agriculture, and the eradication of rural poverty and hunger. For example, one campaign member who was ambivalent about the structural issues saw them as relevant only to activists working with small producers.<sup>510</sup> Reflecting on the debates that took place in the 2009 to 2011 period, she recalled that a major area of contestation related to ‘[...] what should be covered. Water? Farming?’ and then proceeded to explain the nature of the debate as follows: ‘So, you know, one or two of the groups that are part of the Right to Food Campaign are actually agriculturalists [...]; so they wanted something for that lot as well. I can’t remember now’.<sup>511</sup> This lack of understanding may have extended to some of the Right to Food Campaign’s leadership. This was certainly the view of Sita, one of the ‘non-members’ who worked on rural development issues with India’s farmers movements:

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<sup>510</sup> Interview with Nidhi (pseudonym) on 20 March 2016, UK.

<sup>511</sup> Ibid.

[S]ome of the key people in the campaign [...], the origin of their work is not in rural India and not in agriculture; they were mostly working with the poorest, the homeless, the absolutely landless migrant populations and so on, and so for them, fixing the problem at their end, where they were seeing the manifestation was an important response; and to that extent, you know, one can't pick up too big a quarrel with them.<sup>512</sup>

However, a lack of knowledge about the relationship between the structural issues and hunger in India was not the *main* reason for the opposition to including them in the campaign's demands. Numerous interviewees considered the structural matters to be of great import and yet still opposed their inclusion. Some campaign members even worked on productive resources and international trade in other fora, or had in the past done so. For example, Krishna, who supported the 'entitlements and MSP' approach had worked on international trade in the past. He explained: 'You know, I was involved in trade issues. You know, the first time I went into a village with a questionnaire [it] was a questionnaire on the Dunkel Draft<sup>513</sup> and this was then 1994 or 1995 [...]'.<sup>514</sup> In his view, many of his colleagues were also au fait with trade concerns: '[M]any constituents of the Right to Food Campaign have been talking about trade forever. You know, since the Hong Kong Ministerial and since the Dunkel Draft and since the 1990s when the first initial discussion [took place]'.<sup>515</sup> Equally, Shoma a Right to Food Campaign member who also opposed including the structural issues in the campaign's claims worked on the issue of access to productive resources (specifically land and small producers' access to land) at a state level with her NGO: 'I can't speak for other

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<sup>512</sup> Interview with Sita (pseudonym) on 1 September 2014, India (pseudonym) on 1 September 2014, India

<sup>513</sup> The 'Dunkel Draft' was a draft treaty prepared in 1991 in advance of the Uruguay Round of negotiations. For further information please see: N.K. Chowdhry and Jagdish Chand Aggarwal, *Dunkel Proposals: Implications for India and the Third World* (Delhi: Shipra Publications, 1993).

<sup>514</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>515</sup> Ibid.

state campaigns but for [our region] we could not *not* speak about land and land alienation' (in their day-to-day work because of the harmful impact that land acquisitions were having on the rural poor).<sup>516</sup>

#### 5.4.2. Foregrounding the Welfare State Agenda

The second reason why many campaign members opposed including the structural issues in the campaign's demands (and the first pragmatic reason) was because they were concerned about diverting attention away from the entitlements agenda. This concern relates to the Indian state's failure to establish a welfare state in the period since Independence, and the concurrent dearth of large-scale civil society initiatives focused on expanding the public provision of basic services.

The Independence movement leader and first Prime Minister of India, Jawaharlal Neru, was said to be haunted by the prospect of failure in the area of hunger prevention, having claimed that national sovereignty would alleviate this problem. However, the initiatives set up to address hunger following Independence were very limited.<sup>517</sup> The first and main initiative, established in 1947, was to set up a system of food rationing (an early form of the Public Distribution System). Paradoxically, the ration allowance under this programme approached starvation levels.<sup>518</sup> The Public Distribution System and other smaller-scale measures that were put in place were 'embedded in ideas of charity and state paternalism'<sup>519</sup> and aimed, first and foremost, at 'relieving absolute

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<sup>516</sup> Interview with Shoma (pseudonym) on 14 August 2014, India.

<sup>517</sup> Sunil S. Amrith, "Food and Welfare in India, C. 1900–1950," *Comparative Studies in Society and History*, Vol. 50, No. 4 (2008): 1010-35.

<sup>518</sup> *Ibid.*

<sup>519</sup> Jayal, *Citizenship and Its Discontents: An Indian History*. 169.

poverty'.<sup>520</sup> The fundamental imperative of the time was, according to Jayal, to address national-level structural concerns in order to increase the social product and enlarge the national economic pie before a decent standard of living for all could be accomplished.<sup>521</sup>

As the decades rolled on, India's failure to create a welfare state failed to be challenged on a large scale by Indian civil society. According to Vivek Srinivasan,<sup>522</sup> a member of the support group to the legal team in the early days of the right to food case and presently an academic working on public service provisioning in India,<sup>523</sup> leftist critiques that all social interventions with the exception of property redistribution are 'reformist' and ultimately counterproductive contributed to this gap:

So there is a long trend in India of thinking of, let's say, structural issues in a particular fashion which is very influenced by the communist movement. Basically, in some sense, the argument is that if you need, let's say, human advancement, the main base within which you can achieve it is to have radical reforms of property [...]; and anything else was considered to be palliative and often, in some sense, inimical to the very classes of mobilisation for structural change. So this strand of argument has existed practically ever since the communist movement [emerged], from the 1920s onwards. [...] The Right to Food Campaign broke from this mode to a certain extent [...] They all sought to [...] create an importance around delivering services as a way of human advancement.<sup>524</sup>

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<sup>520</sup> Ibid. 167.

<sup>521</sup> Ibid. 168.

<sup>522</sup> Real name.

<sup>523</sup> His latest monograph is Vivek Srinivasan, *Delivering Public Services Effectively: Tamil Nadu and Beyond* (Oxford: Oxford University Press, 2015).

<sup>524</sup> Interview with Vivek Srinivasan (real name) on 19 April 2016 by telephone.



It was in this context that numerous campaign members seemed to fear losing the focus on entitlements. For example, the leading campaign member Poonam, who described herself as torn about which school of thought to back, explained her eventual support for ‘entitlements and MSP’ as follows:

So the Right to Food Campaign was also critiqued: ‘Oh, these are the ration-card-wallahs. They don’t want to talk about production. They are just happy with distribution’. And the campaign, we felt that this was at least one space where we foregrounded these entitlements and the responsibility of the state to provide [...]. Where else do you fight for your entitlements?<sup>525</sup>

However, the question that inevitably arises in response to assertions about the need to foreground the welfare state agenda is this: why couldn’t the Right to Food Campaign put forward entitlements-focused *and* structural change-focused claims? This question was put to several interviewees but in each case failed to elicit a response. However, reading between the lines it appears that two challenges came together to prevent the Right to Food Campaign from putting forward structural claims alongside entitlements claims. These were:

- The campaign’s need to avert ‘civic contraction’; and
- The campaigns inability to translate broad principles on productive resources and international trade into concrete claims within the tight timescale within which it found itself working.

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<sup>525</sup> Interview with Poonam (pseudonym) on 1 August 2014, India.

Each of these issues will be discussed in turn in the subsequent sections.

#### 5.4.3. Civic Contraction and Operating within a Shifting Terrain of Rights

The concept of ‘civic contraction’ was introduced in Chapter 1. In that chapter, I explained how Morris amended Lockwood’s civic stratification framework to introduce a third axis into Lockwood’s model, creating an opposition between ‘civic expansion’ and ‘civic contraction’. These binary oppositions aptly capture the ‘shifting character of a regime of rights’.<sup>526</sup> During the campaign for the right to food act, Right to Food Campaign members were concerned about ‘civic contraction’ for two reasons. The first related to the manifest intention of the UPA II government – which became apparent shortly after its formation in May 2009 – to use the right to food law-making process to *roll back* the Supreme Court order-mandated entitlements. The second related to the perceived tenuousness of continuing to rely on the Supreme Court orders, which were, after all, only *interim* orders, as the legal basis for the schemes. Each of these two reasons for concern will be discussed in turn in this section.

When the legislative process kicked off shortly after the formation of the UPA II government, it quickly became apparent that the Congress Party’s manifesto pledge to enact a right to food law was simply an electioneering ploy. The first public consultation document on the proposed new law, penned by the Food Ministry, made apparent the government’s intention to use the legislative process to *contract* rather than *expand* or even simply consolidate the Supreme Court order-mandated entitlements. Among other things, the government proposed to:

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<sup>526</sup> Lydia Morris, "Britain's Asylum and Immigration Regime: The Shifting Contours of Rights," *Journal of Ethnic and Migration Studies*, Vol. 28, No. 3 (2002): 409-25. 410.

- Reduce the number of families with BPL ('below poverty line') status from 65.3 to 59.1 million in line with the latest – but highly contested – poverty rate statistics;
- Put in place a mechanism through which BPL status could be revoked annually on the basis that some households would 'cross the poverty level each year'. However, no mention was made of a mechanism through which BPL status could be accorded to families who fell below the poverty line in spite of the fact that large numbers of poor people move in and out of poverty on a regular basis;<sup>527</sup>
- Consider reducing the quantity of grain available for purchase by BPL families from 35kg to 25kg per month;
- Assess whether the Antyodaya Anna Yojana scheme should be dismantled. (The Antyodaya Anna Yojana scheme was targeted at the 'poorest of the poor' in India – those who were viewed as being even poorer than the average person with BPL status. Through this scheme quantities of food grain exceeding 35kg were made available at lower prices than those charged to families categorised as BPL); and
- Dismantle all of the other Supreme Court-order mandated schemes (such as the Mid-day Meal Scheme, the Integrated Child Development Services Scheme, the Old Age Pensions Scheme and the Maternity Allowances Scheme) on the basis that 'multiple schemes were to be avoided for operational convenience'.<sup>528</sup>

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<sup>527</sup> Mary Jo Bane and David T. Ellwood, "Slipping into and out of Poverty: The Dynamics of Spells," *Journal of Human Resources*, Vol. 21, No. 1 (1983): 1-23.

<sup>528</sup> Ministry of Consumer Affairs, Food and Public Distribution, Concept Note on the proposed National Food Security Bill (9 June 2009).

It is not unheard of for a government to rescind rights accorded by the courts by enacting legislation. As noted in Chapter 1, Samson and Short have analysed way in which the Australian government was able to overturn a progressive High Court ruling on indigenous rights by enacting statutory law.<sup>529</sup> Nonetheless, the government's plans came as a shock to the campaign. Poonam remarked that it was 'a huge let down because political will is supposed to go further than the judiciary'.<sup>530</sup> Krishna, equally, remarked that the government's proposals were 'terrible; terrible; [we] took them to the cleaners; we took them to the cleaners completely on that'.<sup>531</sup>

Although the right to food law would not, in the end, be enacted until 2013, in 2009 the UPA II government appeared to be moving ahead rapidly with the legislative process. In May 2009 it announced its intention to enact the right to food law – along with several other pieces of legislation – within one hundred days. This announcement, naturally, landed the campaign with an extremely tight timescale. Sita, an NGO activist working on agriculture and rural development remarked in this regard:

The Right to Food Campaign, when they influenced the Congress manifesto for the UPA's second term, they never realised that Rahul Gandhi<sup>532</sup> will say that in our first hundred days of the new government itself we will try and bring, table the bill in parliament, so it was a mad rush.<sup>533</sup>

She continued to reflect that:

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<sup>529</sup> Samson and Short, "The Sociology of Indigenous Peoples' Rights." 178.

<sup>530</sup> Interview with Poonam (pseudonym) on 1 August 2014, India.

<sup>531</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>532</sup> Rahul Gandhi, Sonia and Rajiv Gandhi's son was an influential Congress Party member of Parliament at that time.

<sup>533</sup> Interview with Sita (pseudonym) on 1 September 2014, India.

You know, I think they walked into the [pause]; it's a problem not just with the Right to Food Campaign, but, you know, many civil society organisations when they articulate an initial demand and then you leave it at the level of rhetoric without working out the details, you can see that for whatever populist or other reasons, when parts of the state decide to pick up that demand and, you know, try and appear to be responding to it they move in faster and somehow make it work in their paradigm and that was something that they caught themselves in.<sup>534</sup>

Nidhi, an academic and former member campaign echoed Sita's remarks: [...] the Right to Food Campaign, I think they were not prepared at all [for the campaign for the act]'.<sup>535</sup>

A quick thought experiment leads to the conclusion that the campaign only had two options if it wanted to prevent the government from using the legislative process to roll back the Supreme Court order-mandated entitlements: it could either push for the legislative process to be halted or slowed down and revert to relying on the interim court orders as the legal basis for the schemes or it could put forward and fight for an alternative set of proposals for the proposed statute. As discussed in the next section, the campaign was, at this time, struggling to translate the structural issues into concrete claims. This meant that any alternative proposals, if they were to be put out quickly, would necessarily have to be centred on the entitlements.

Sita, one of the non-members who worked with farmers' movements argued strongly

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<sup>534</sup> Ibid.

<sup>535</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

for the Right to Food Campaign to push for the law-making process to be put on hold while the structural dimensions of the campaign's claims could be worked out:

I was basically arguing that they should not be a campaign in a rush, you know? There are many other causes and movements out there who really have to fight a race against time when it comes to real fast external developments outside the campaign, but here was a campaign which had a foot inside the National Advisory Council to influence the government from within, which was getting fantastic orders from the judiciary, and they really had no reason to rush into it in terms of allowing a bad bill to come out. That was my point in the meeting. Saying, you know, can you all just slow down, and somehow get the government also to slow down so that we get a good bill out there which includes agricultural livelihoods [and] production-related issues at the centre of the bill.<sup>536</sup>

Several members of the Right to Food Campaign, however, were concerned about continuing to rely on the interim orders. They believed that relying on those orders 'was tenuous' and that the campaign 'should get these [the schemes] in some form in a legal [legislative] form'.<sup>537</sup> The leading campaign member Anil explained: '[...] [T]he interim court orders are just interim orders and you never know what will happen to them. So the more legal firepower you have the better'.<sup>538</sup> Bharka, another leading member of the campaign had a similar perspective: [B]ut why the food security act? The schemes can be stopped. Schemes can be shifted from one place to other place but act means it is an act of parliament. It will have legal backing'.<sup>539</sup>

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<sup>536</sup> Interview with Sita (pseudonym) on 1 September 2014, India.

<sup>537</sup> Interview with Poonam (pseudonym) on 1 August 2014, India.

<sup>538</sup> Interview with Anil (pseudonym) on 27 August 2016, India.

<sup>539</sup> Interview with Bharka (pseudonym) on 4 September 2014, India.

It is true that while these debates were taking place, the Right to Food Campaign continued to obtain progressive orders from the Indian Supreme Court. And yet, it is also the case that courts can be unpredictable. As legal scholars Cali and Meckled-Garcia have stressed: 'Legal reasoning proceeds mainly on the basis of principles (or doctrines) and the application of those in specific cases is a matter of reasoning. Law is as predictable as good reasoning is predictable'.<sup>540</sup> The case of the 'Save the Narmada' campaign discussed in Chapter 1 illustrates the unpredictability of court proceedings in India. As noted, during this campaign a coalition of social movements and NGOs waged a battle to prevent the construction of a large number of dams on the Narmada River as these would have displaced tens of thousands of people. As with the petitioners in the right to food case, the Save the Narmada campaign only turned to the Supreme Court when it felt it had run out of other options. However, after notching up a series of legal victories, in 2000 the tide turned against the campaign and the court ordered that construction on the dams continue.

#### 5.4.4. Translating Abstract Principles and Standards into Concrete Claims

If the Right to Food Campaign been able to formulate a list of *structural change*-oriented claims rapidly, there may have been more support for including them in the 'Essential Demands' alongside the *individual entitlements*-focused claims. However, according to the leading campaign member, Poonam, those campaign members who *were* interested in securing structural change struggled to translate abstract principles on productive resources and international trade into concrete policy goals. Poonam explained: 'Yes, the structural causes were large, but even when we were [...] getting into the act and the framing of the act, what could be the specific demands within a law

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<sup>540</sup> Cali and Meckled-Garcia, "Human Rights *Legalized* - Defining, Interpreting, and Implementing an Ideal." 3.

that could come in? Those were really difficult to come down [to]'.<sup>541</sup> She continued, illustrating her point in reference to the issue of water:

For us on the western [side of] India, water was very critical, you know, and not to have water equity or access to water as part of the food security law? But that we compromised, because again, water was such a huge area that people said that, you know, bringing it under this law, how will it help? What is the minimum guarantee that you will ask for? And then you have to look at the whole structure [of the water system] and in the end, that got dropped out. So did land reform.<sup>542</sup>

The challenges inherent in translating the structural concerns into concrete policy demands were exacerbated by the need to consult the Right to Food Campaign's membership. The same campaign member explained: 'We always have to debate [our demands]; [and] what will fit into the two pages? It has to go to many people; it has to be simply understood; it needs to be clear; we need to know exactly what we are negotiating for. So it's been a process of really whittling down'.<sup>543</sup>

The challenges faced by the campaign in this area point to an important limitation of human rights. As the history of the development of the right to food in India illustrates, economic and social rights – as 'new' rights – tend to be empty of concrete content while at the same time 'the abstract and conceptually empty articulation of socioeconomic rights allows for the institutional containment and suppression of the

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<sup>541</sup> Interview with Interview with Poonam (pseudonym) on 1 August 2014, India.

<sup>542</sup> Ibid.

<sup>543</sup> Interview with Interview with Poonam (pseudonym) on 1 August 2014, India (pseudonym) on 1 August 2014, India.



needs they represent'.<sup>544</sup> Pieterse has argued that in view of this, 'constitutional drafters, legislatures, litigants, activists, academics, and judges must increasingly concentrate on clarifying the concrete content of entitlements embodied by socioeconomic rights and on explicitly linking such content to the actual satisfaction of material need'.<sup>545</sup> But *how* is the content of human rights law (and the policies and programmes underlying its content) to be determined?

It has been argued that human rights principles 'provide a compelling normative framework for the formulation of national and international policies [...]'.<sup>546</sup> However, the challenges faced by the Right to Food Campaign in translating abstract principles into concrete claims lends weight to Jonsson's contention that programming (and, for that matter, policy-making) 'cannot just be guided by standards and principles, because these are not precise enough to inform concretely the operations of programming'.<sup>547</sup> This presents human rights professionals who seek to remove rights 'from the heights of abstract declaration' towards 'the front-lines of application' with a serious challenge.<sup>548</sup>

It is not inconceivable that a government could compel its ministries to review and reformulate government policy and supporting legislation in light of human rights standards and principles. But do civil society groups really have the capacity to do this?

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<sup>544</sup> Pieterse, "Eating Socioeconomic Rights: The Usefulness of Rights Talk in Alleviating Social Hardship Revisited." 799.

<sup>545</sup> Ibid. 799.

<sup>546</sup> Koen De Feyter, "Sites of Rights Resistance," in *The Local Relevance of Human Rights*, ed. Stephan Parmentier, Christiane Timmerman, and George Ulrich (Cambridge: Cambridge University Press, 2011). 13

<sup>547</sup> Urban Jonsson, "A Human Rights-Based Approach to Programming," in *Reinventing Development? Translating Rights-Based Approaches from Theory into Practice* ed. Paul Gready and Jonathan Ensor (London: Zed Books, 2005). 52.

<sup>548</sup> Paul Gready, "Reasons to Be Cautious About Evidence and Evaluation: Rights-Based Approaches to Development and the Emerging Culture of Evaluation," *Journal of Human Rights Practice*, Vol. 1, No. 3 (2009): 380-401. 385.

Especially when they are working in a hostile political environment, fighting to hold onto the gains that they have made, as well as obtain new ones.

The leading campaign member quoted above, Poonam, was well aware of the limited gains that had been made in terms of using right to food principles to formulate policy; she didn't, however, seem to be able to see a way forward:

So even if the act can be limited because you only have limited scope to do rule making on everything, the expectation was that there would be a broader policy framework by now in India [...]; we have equated the right to food with a right to life [and we expected that the right to food] would then permeate as a lens through which we would be able to see all the other investments in rural infrastructure, urban [poverty], land and water equality, use, basic things. That, I think, there is still completely no dialogue on that.<sup>549</sup>

International human rights law provides little guidance in terms of the formulation of the policies and programmes that must be developed to ensure the fulfilment of economic and social rights. According to international human rights law states have a level of discretion to formulate their own fulfilment systems and to put in place the right to food policies they deem to be appropriate. What the right to food – or, indeed, any other international human right – provides thus are 'criteria to monitor such policies not indications as to which model of economic or agricultural development should be pursued'.<sup>550</sup> Indeed, and as discussed in Chapter 1, for decades, in the context of Cold War-era disputes about the universality of human rights, international human rights law

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<sup>549</sup> Interview with Interview with Poonam (pseudonym) on 1 August 2014, India.

<sup>550</sup> Claeys, *Human Rights and the Food Sovereignty Movement - Reclaiming Control*. 111.

actors were at pains to stress that human rights were realisable under any economic model. Perhaps as a result of this history, even today uppercase ‘Human Rights’ consider that ‘to argue that certain economic models structure systematic violations of human rights [...] seems somehow ideological in contrast to the ostensible neutrality that the human rights movement has historically attempted to maintain’.<sup>551</sup>

#### 5.4.5. ‘Overburdening’ the Right to Food Statute

A further reason for opposition to including the structural issues in the campaign’s demands pertained to concerns about ‘overburdening’ the proposed statute. A Right to Food Campaign activist who attended a consultation meeting in July 2009 remarked that although

the [structural] concerns raised here are important and we agree with it, we might end up burdening this act with too many things. Instead we should call this “food entitlements Act” and work for other acts which encapsulates what we understanding as RTF [right to food].<sup>552</sup>

In a similar vein, Jayati, the director of a legal empowerment NGO asserted: ‘that is like expanding its scope too much. Ultimately food security is linked with land, is linked with agriculture, is linked with other aspects, but how much can you load on one legislation?’<sup>553</sup>

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<sup>551</sup> Yamin, "The Future in the Mirror: Incorporating Strategies for the Defense and Promotion of Economic, Social and Cultural Rights into the Mainstream Human Rights Agenda." 1234.

<sup>552</sup> Right to Food Campaign, "Minutes of the National Consultation on Right to Food Act."

<sup>553</sup> Interview with Interview with Jayati (pseudonym) on 25 August 2014, India.

This concern is difficult to make sense of. It is not immediately apparent why a multitude of issues, or at least a few more issues than the entitlements schemes, could not be incorporated into a single piece of legislation unless this is a specificity of the Indian law-making system. However, according to numerous interviewees, Colin Gonsalves, one of India's foremost legal experts, certainly believed that it was possible. As leading campaign member Krishna noted: 'Colin Gonsalves was very very critical himself; he thought we were making a huge mistake [by not incorporating the structural concerns]'.<sup>554</sup>

This issue raises a broader concern. Many economic and social rights, the right to food among them, require law and policy reform in a vast number of areas. The thematic reports of the former and present UN Special Rapporteurs on the right to food indicate that its realisation may require reform in, among other areas: agricultural development, control over and access to productive resources, the management of fishing, international trade, value chains, food speculation and food aid.<sup>555</sup> How can such a large number of diverse and yet cross-cutting issues be legislated for? One tool proposed by international human rights law professionals is the use of 'framework legislation'. Framework laws lay down general principles and obligations and 'leave[...] it to implementing legislation and the competent authorities to determine specific measures to be taken [including the enactment of individual statutes] so as to realize such obligations, possibly within a given time limit.'<sup>556</sup> This type of legislation is explicitly intended to address cross-sectoral issues and facilitate a cohesive and coordinated

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<sup>554</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>555</sup> The thematic reports of the former and present Special Rapporteurs on the Right to Food can be viewed here: <http://www.ohchr.org/EN/Issues/Food/Pages/HilalElver.aspx> and <http://www.srfood.org/en/documents> (accessed 12 Mar. 2018).

<sup>556</sup> FAO, "Constitutional and Legal Protection of the Right to Food around the World," (Rome: FAO, 2011). 30.

approach to them.<sup>557</sup> And yet in the context of the campaign for the right to food act, in which the activists faced a hostile government that was intent on using the legislative process to roll back pre-existing entitlements, the creation of framework legislation seems likely to have been a recipe for inaction or evasion.

#### 5.4.6. Assessing the Available Political Opportunities

The final reason why some campaign members opposed the inclusion of the structural concerns was because they felt that the government would not be open to them. The dilemma of whether to pursue an ideal goal or a goal that is viewed as achievable is, of course, a common one faced by activists.<sup>558</sup> And in many cases, activists have scaled down their objectives in light of their assessment of the available opportunities very much in the same way that the aggrieved groups studied by Bob ‘trimmed’ their claims to meet the worldviews of powerful gatekeeper NGOs.<sup>559</sup> As discussed in Chapter 3, in the early days of the litigation phase of the campaign, the petitioners ‘started discussing the possibility of pursuing a bold strategy in the court. There was, on the one hand, a desire to ask for far-sighted directions [...]. At the same time, there was a need to be strategic in taking up issues that the court is likely to accept’.<sup>560</sup> However, in the end the legal team and the support group decided that it would be judicious to build their demands around existing government initiatives – and in particular the eight schemes that the government had referred to in one of its responses to the court.<sup>561</sup> Subsequent unsuccessful attempts to bring structural issues to the Supreme Court indicate that this

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<sup>557</sup> "A Guide on Legislating for the Right to Food," (Rome: FAO, 2009). 4.

<sup>558</sup> Nick Buxton, "Debt Cancellation and Civil Society: A Case Study of Jubilee 2000," in *Fighting for Human Rights* ed. Paul Gready (London: Routledge, 2004); Hertel, "Hungry for Justice: Social Mobilization on the Right to Food in India."; Bob, *The International Struggle for New Human Rights*.

<sup>559</sup> Bob, *The International Struggle for New Human Rights*; Buxton, "Debt Cancellation and Civil Society: A Case Study of Jubilee 2000."; Claey, *Human Rights and the Food Sovereignty Movement: Reclaiming Control*.

<sup>560</sup> Guha-Khasnobis and Vivek, "The Rights-Based Approach to Development: Lessons from the Right to Food Movement in India." 3.

<sup>561</sup> Ibid. 3. See also: Morris, *Asylum, Welfare and the Cosmopolitan Ideal: A Sociology of Rights*.

was a judicious approach. Krishna explained:

We have tried [to litigate the structural issues]. We have filed affidavits and so on on a range of issues. Unfortunately, the courts have not engaged us in the way that we hoped they would, whether it was on the issue of land, whether it was on the issue of water. We have filed a number of interim applications [...]. We tried to put it in but we have not been met with the same enthusiasm as we have on entitlement issues. So that has been the problem.<sup>562</sup>

Concerns about the ‘achievability’ of proposed demands also influenced campaign members in the statute phase of the campaign. Several influential campaign leaders were convinced that the government would not be open to the structural demands. Anil, for example, asserted:

There is no way that [obtaining a right to food law which incorporated the structural concerns] could ever happen, I think. The UPA government’s main concern was to [meet] their [manifesto] pledge. Full stop. That meant this 25 kilos or whatever and then, of course, the Mid-day Meal and ICDS part that was already in the Supreme Court order [...]; so that part they were comfortable with. [...] Beyond that I didn’t think the government was willing to contemplate very much.<sup>563</sup>

Pramila asserted along similar lines that ‘[...] land, we knew we cannot bring it there [we thought] [...] this will never get through. This will not be accepted’.<sup>564</sup>

## 5.5. Summary

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<sup>562</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>563</sup> Interview with Interview with Anil (pseudonym) on 27 August 2016, India (pseudonym) on 27 August 2016, India.

<sup>564</sup> Interview with Pramila (pseudonym) on 6 September 2016, India.

This chapter examined the way in which the Right to Food Campaign translated the various conceptions of the right to food that emerged in the early days of the campaign for the act into concrete claims (the ‘Essential Demands’). The process of ‘claim formulation’ as a distinct ‘stage’ of the human rights law rights-creation process has, to date, received little attention in the relevant literature, although numerous scholars, including Bob, Claeys and Kurasawa, have examined how civil society groups engage in contestation over the meanings of human rights.<sup>565</sup>

After laying out the three ‘schools of thought’ that emerged within the campaign regarding how to translate the conceptions into concrete claims, Chapter 5 looked at how the campaign came to the decision to focus on ‘entitlements and MSP’, arguing that a relatively small group of campaign leaders were able to exert a disproportionate level of influence over the decision-making process. The chapter also discussed the various factors that shaped the campaign’s decision to focus on ‘entitlements and MSP’, noting that these were largely based on pragmatic rather than ideological concerns.

The main theoretical contribution of this chapter was as follows; that while the ‘dilution’ of pre-legalised conceptions of human rights has to date been associated primarily with the legalisation process, this chapter demonstrates that pre-legalised conceptions of human rights can, in fact, be diluted by civil society actors *before* the legalisation process commences – and for a variety of different reasons.

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<sup>565</sup> Claeys, *Human Rights and the Food Sovereignty Movement: Reclaiming Control*; Bob, *The International Struggle for New Human Rights*; Fuyuki Kurasawa, *The Work of Global Justice - Human Rights as Practices* (Cambridge: Cambridge University Press, 2007).

This finding has implications for debates on the potential and limitations of human rights. As noted above, had the Right to Food Campaign worked out how to translate the structural dimensions of the right to food into concrete claims *before* it called for the creation of a right to food statute, the campaign may have decided to put forward *structural change-centred* claims alongside *individual entitlements-centred* claims.

The chapter also points to the importance of intra-civil society dynamics and intra-civil society power relations in shaping the claims that are made of the state and, therefore, the content of human rights law itself. As discussed earlier, there is a growing body of literature that examines the extent to which human rights law is being shaped by the metaphorical 'below'. However, in this literature, the metaphorical 'below' are, in fact, often composed of coalitions of actors which include ordinary people (i.e. individuals and communities whose rights are affected), social movements and NGOs.<sup>566</sup> However, the internal dynamics of these coalitions are rarely investigated. For example, in the case of the Save the Narmada campaign, Balakrishnan noted that '[t]he decision to approach the court had been taken after much internal deliberation and disagreement [...]'.<sup>567</sup> And yet he fails to explain *how* the decision was made and which actors exerted the most influence over the decision-making process: was it the affected people themselves? Or was it the NGOs and social movements that were ostensibly working to support the cause of the downtrodden? These intra-civil society dynamics need to be

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<sup>566</sup> For example, please see: : Balakrishnan, "Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle."; Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*; Boaventura De Sousa Santos and Cesar A. Rodriguez-Garavito, "Law, Politics, and the Subaltern in Counter-Hegemonic Globalization," in *Law and Globalization from Below - Towards a Cosmopolitan Legality*, ed. Boaventura De Sousa Santos and Cesar A Rodriguez-Garavito, Cambridge Studies in Law and Society (Cambridge: Cambridge University Press, 2005).

<sup>567</sup> Rajagopal Balakrishnan, "Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle," *ibid.* 197



examined in more detail if we are to gain a better understanding of the extent to which human rights law is really being shaped by the world's poor and marginalised.

## Chapter 6: The Right to Food Campaign's Strategies: 'Uppercase' and 'Lowercase'

### 6.1. Introduction

The previous two chapters analysed the 'conceptualisation' and 'claim-formulation' stages of the human rights law-creation process. Chapters 6 and 7 turn to the 'legalisation stage'. Chapter 6 describes the strategies employed by the Right to Food Campaign in an attempt to secure the inclusion of its claims in the proposed statute, and analyses them in light of Hopgood's typology of *approaches* to human rights along with the wider literature on human rights and civil society strategies. Chapter 6 provides the necessary background to Chapter 7 which evaluates the effectiveness of the campaign's strategies and the role that they played in securing the inclusion of the campaign's claims in the statute.

Earlier in the thesis, I explained that Hopgood distinguishes lowercase 'human rights' from uppercase 'Human Rights' along three main dimensions: goals (instrumental gains versus the constitutionalisation of international human rights law); the status attributed to international human rights law norms (flexible and malleable or top down and authoritative); and strategies (creative, spontaneous and contestual or institutional and disciplined actions).<sup>568</sup> It was, moreover, argued that the Right to Food Campaign's approach to human rights must be characterised as 'lowercase' as its members have no

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<sup>568</sup> Hopgood, *The Endtimes of Human Rights*.

apparent interest in the global project to constitutionalise international human rights law.<sup>569</sup>

In terms of the distinction drawn between the strategies used by upper- and lowercase actors, Hopgood argues that uppercase ‘Human Rights’ employs disciplined and institutionalised tactics that – in his view – are unlikely to be efficacious outside of a limited set of circumstances (discussed further below) while lowercase ‘human rights’ uses creative extra-institutional modes of action such as consumer boycotts, social mobilisation and even violent disruption – strategies which *are*, in Hopgood’s view, likely to be effective. Moreover, in what is arguably Hopgood’s most controversial claim, actors engaged in lowercase ‘human rights’ do not elicit need the support of actors engaged in uppercase ‘Human Rights’, except for instrumental reasons such as to gain publicity for a cause.<sup>570</sup>

This chapter analyses the Right to Food Campaign’s strategies in light of Hopgood’s framework, elements of which echo arguments made by other scholars. It demonstrates that, in contradiction to Hopgood’s typology, the Right to Food Campaign used strategies that Hopgood sees as associated with lowercase *and* uppercase approaches to human rights. Further nuance is also required with respect to the nature of the tactics that Hopgood attributes to lowercase ‘human rights’ as Hopgood appears to idealise some of these. For example, he views social mobilisation and protest as erupting spontaneously ‘from below’. In the case of the Right to Food Campaign, however, many if not most of the protests and rallies that took place were organised from the top

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<sup>569</sup> Please see Chapter 4.

<sup>570</sup> Hopgood, *The Endtimes of Human Rights*.

down. In light of these findings, this chapter argues that, in spite of its analytical utility in terms of distinguishing between different approaches to human rights, Hopgood's typology may need to be amended.

Hopgood's contention that lowercase 'human rights' has little need for uppercase 'Human Rights' is, however, born up by this case study. The Right to Food Campaign did not elicit the support of uppercase 'Human Rights', even though several leading campaign members had close relations with actors that tend to be usually engaged in uppercase 'Human Rights' including Amnesty International and the (former) UN Special Rapporteur on the Right to Food. This finding draws attention to the need for the relationship between lowercase 'human rights' and uppercase 'Human Rights' to be investigated in more detail. There are numerous cases in the literature in which lowercase 'human rights' has called on uppercase 'Human Rights' for assistance and numerous cases in which it has not. Hopgood's blanket assertion that there is no meaningful relationship between the two approaches therefore needs to be questioned. There are even cases in which lowercase 'human rights' has appealed to uppercase 'Human Rights' *not* to intervene in a particular situation for fear that an intervention from 'outside' would worsen it. Despite this variation in practice, we lack an adequate understanding of when, why and how an intervention by uppercase 'Human Rights' is deemed to be either irrelevant, of utility or even detrimental to the work of lowercase 'human rights'.

The remainder of this chapter is laid out as follows. Section 6.2 elaborates on Hopgood's claims pertaining to the nature of the strategies employed by lower- and uppercase human rights, making reference to the wider literature on civil society

strategies as relevant. In Section 6.3, Hopgood's analysis of the relationship between lowercase 'human rights' and uppercase 'Human Rights' is discussed. Section 6.4 describes and analyses the strategies used by the Right to Food Campaign in light of Hopgood's framework and some concluding remarks are laid out in Section 6.5.

## 6.2. Strategies in Hopgood's Typology

Because Hopgood define the strategies used by lowercase 'human rights' largely in opposition to those used by uppercase 'Human Rights', his characterisation of the latter will be laid out first. Hopgood argues that uppercase 'Human Rights' strategies comprise, in the main, disciplined, institutional actions such as report-writing, 'naming and shaming', elite lobbying and 'slacktivist' campaigning. To illustrate the nature of elite lobbying, Hopgood points to the way in which in the United States, uppercase 'Human Rights' tends to rely heavily for influence on mobilising domestic elites to pressurise the US government to 'us(e) its vast resources to coerce, cajole, and induce improved human rights abroad'.<sup>571</sup> Sharp has made a similar observation about US-based international human rights NGOs' reliance on elite lobbying, attributing this in part to the fact that 'institutions such as Harvard Law School tend to teach students to think like global power insiders, working within "the system" rather than organizing a grassroots campaign from without'.<sup>572</sup> This restricts the influence of 'Human Rights' to situations in which its goals happen to coincide with 'the functional requirements of powerful states'.<sup>573</sup>

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<sup>571</sup> Ibid.XI.

<sup>572</sup> Dustin N. Sharp, "Human Rights Fact-Finding and the Reproduction of Hierarchies," in *The Transformation of Human Rights Fact-Finding*, ed. Philip Alston and Sarah Knuckey (Oxford: Oxford University Press, 2016). 72.

<sup>573</sup> Hopgood, *The Endtimes of Human Rights*. 3.

In addition, Hopgood asserts that ‘Human Rights’ campaigns tend to be characterised by *slacktivism*, ‘activism that is low cost, as low cost as clicking the mouse button or sending a text’.<sup>574</sup> Avaaz petitions, for example, ‘can get five hundred thousand signatures in hours’. But with no united philosophy ‘beyond “click”’, Hopgood queries, do they have genuine ‘scope for exercising social and political pressure’?<sup>575</sup> Underlying the present-day popularity of these types of campaigns, Hopgood argues, is the fact that ‘Human Rights’ lacks an engaged and committed body of activists. Unlike in the past when organisations like Amnesty International saw human rights as a ‘spiritual mass movement’ and placed emphasis on the recruitment of ‘members who would be active, not just members who would pay’ the majority of people who support ‘Human Rights’ today, according to Hopgood, have adopted human rights ‘as a kind of lifestyle choice’, in the sense that they see it as almost ‘fashionable’ to express support for human rights, but fail to meaningfully engage in human rights activism.<sup>576</sup>

Hopgood has less to say about the strategies used by lowercase ‘human rights’, but seems to see them as standing in opposition to those employed by uppercase ‘Human Rights’. Hopgood suggests that lowercase ‘human rights’ are able to build genuine movements, for example, on the basis of ethnic or labour solidarity, and he sees them as operating in less institutional settings often at ‘the level where social movements operate’.<sup>577</sup> Their modes of action are, moreover, more ‘bottom-up’ and less hierarchical than those of ‘Human Rights’, and include, for example, consumer boycotts, hacking attacks, mass popular protest and ‘even violent disruption’.<sup>578</sup>

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<sup>574</sup> Ibid. 196.

<sup>575</sup> Ibid. 107.

<sup>576</sup> Ibid. 110.

<sup>577</sup> Ibid.

<sup>578</sup> Ibid. X.

Importantly, he notes, in contrast to ‘Human Rights’, ‘human rights’ are deeply embedded in concrete social contexts.

The distinction that Hopgood makes between lowercase ‘human rights’ and uppercase ‘Human Rights’ echoes claims made in the wider literature on civil society. For example, comparisons between the ‘lowercase-uppercase’ typology and the ‘insider-outsider’ framework could be made. Scholars from the fields of international relations and political science in particular have analysed ‘insider’ and ‘outsider’ groups and what groups have to do if they want to get ‘inside’ (and what price they have to pay).<sup>579</sup>

The main concern in relation to institutional engagement is that institutional actors will seek to quell opposition and criticism through a strategy of co-option and assimilation which involves drawing activists into dialogue and engagement with a range of institutional fora.<sup>580</sup> Comparisons between the ‘lowercase-uppercase’ typology and the ‘consensual-constestual’ framework could also be made. For example, while the international Jubilee 2000 movement was united in terms of its core objective of addressing the global debt crisis, there were divisions on how this could best be achieved. At the heart of the opposing views on tactics within this movement was the fact that Jubilee 2000 encompassed what Howell and Pearce call ‘consensual’ and ‘contestual’ views of civil society.<sup>581</sup> A consensual view sees civil society ‘as a self-regulating arena of the private economic individual’ which counters ‘the unequal tendencies of global capitalism while retaining the market principle of economic organization’. A ‘contestual’, by contrast, view sees civil society as a realm of

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<sup>579</sup> Robert O'Brien et al., *Contesting Global Governance: Multilateral Economic Institutions and Global Social Movements* (Cambridge: Cambridge University Press, 2000).

<sup>580</sup> Ibid.

<sup>581</sup> Howell, J. and Pearce, J. (2001) *Civil Society and Development: a critical exploration*, Boulder, CO: Lynne Rienner Publishers, 58 in Buxton, "Debt Cancellation and Civil Society: A Case Study of Jubilee 2000.

emancipation, of alternative imaginations of economic and social relations and of ideological contest, 'one that seeks to challenge the embedded power relationships and inequalities that make development an often conflictual rather than consensual process'.<sup>582</sup>

In a similar vein, but looking at civil society groups in India specifically, Fadaee has posited that civil society actors that work on human rights can be divided into two groups: those that 'oppose and challenge the state' and have an 'antagonistic and hostile' relationship to it;<sup>583</sup> and those that work cooperatively with the state and view the Indian government as 'extremely receptive and helpful' and as supportive of human rights.<sup>584</sup> As with the framework laid out in *Endtimes*, implicit in Fadaee's categorisation is a normative judgement: an insinuation that only contentious actors are doing 'real' human rights work.

As in Hopgood's typology, it is interesting to note that a clear dividing line is often drawn between each side of the binary in the pertinent frameworks: one is either engaged in 'human rights' or 'Human Rights'; one is either an 'insider' or an 'outsider'; one is either a 'collaborative NGO' or a 'contentious NGO' and so on.<sup>585</sup> As we will see below, a clear dividing line between these approaches or types of actors is not apparent in the present case study.

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<sup>582</sup> Howell, J. and Pearce, J. (2001) *Civil Society and Development: a critical exploration*, Boulder, CO: Lynne Rienner Publishers in *ibid*.

<sup>583</sup> Fadaee, "Civil Society Organisations in India and Construction of Multiplicity of Human Rights." 572.

<sup>584</sup> *Ibid*. 573.

<sup>585</sup> There are, however, studies which demonstrate that some civil society actors use insider and outsider strategies. See, for example: Claeys, *Human Rights and the Food Sovereignty Movement: Reclaiming Control*.



Hopgood clearly believes that the tactics used by lowercase ‘human rights’ are more likely to bring about meaningful social change than those employed in the world of uppercase ‘Human Rights’. Underpinning this belief is an understanding of social change which emphasises the need to alter the balance of power through social and political mobilisation. Hopgood explains:

It is political leverage, not human rights, that make things happen. The wealthy and the influential have it, the poor do not except when organized in sufficiently large numbers. And mass protest for the recognition of group entitlements is the sort of mobilization away from which classical human rights tends to steer us.<sup>586</sup>

He points, by way of illustration to the fact that ‘[u]nseating the American-backed Mubarak took violence and millions of angry Egyptians not decades of effort by Amnesty and Human Rights Watch’.<sup>587</sup>

The absence of genuine ‘movement-building’ in the mainstream human rights sector – especially at an international level where it is likely to be difficult to build movements – has been observed by other scholars. Nash, for instance, has asserted that ‘it is necessary to find a way to build support for human rights within what have historically been constituted as national political communities’, stressing that ‘cosmopolitan law can *only* advance as a result of political mobilisation’ (emphasis added).<sup>588</sup> Sharp has similarly observed that:

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<sup>586</sup> Hopgood, Stephen. In *Human rights: past their sell-by date*. OpenGlobalRights, 2013.

<sup>587</sup> Ibid.

<sup>588</sup> Kate Nash, "Dangerous Rights: Of Citizens and Humans," in *Rights in Context: Law and Justice in Late Modern Society*, ed. R. Banakar (Ashgate Publishing Company, 2010). 81.

Fact-finding and the projection of professional, technocratic expertise has served as an impressive platform for high-level lobbying and pressure politics via the mobilization of shame, but when it comes to effecting meaningful change, such tactics are ultimately no substitute for developing a genuine human rights constituency akin to other social justice movements throughout history.<sup>589</sup>

Interestingly, these understandings of how social change happens stand in contrast to the understandings of social constructivists from the field of international relations. Scholars from the field of international relations tend to focus on the role of ‘*persuasion*, and not just reason or force’.<sup>590</sup> They argue that under the right conditions ‘persuasion by NGOs can shame elites into working to end torture and murder in which they are involved [...]’ because once ‘valuing human rights becomes part of the *identity* of elites, they work actively to *prevent* human rights abuses’.<sup>591</sup>

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<sup>589</sup> Sharp, "Human Rights Fact-Finding and the Reproduction of Hierarchies." 70.

<sup>590</sup> Nash, "Human Rights, Movements and Law: On Not Researching Legitimacy." 7.

<sup>591</sup> *Ibid.* 7.

### 6.3. The Relationship between ‘Human Rights’ and ‘human rights’

Hopgood’s most controversial claim, perhaps, is that there is a structural separation between uppercase ‘Human Rights’ and lowercase ‘human rights’ and that while the former relies on the latter for victims and publicity, the latter has little need for the former. Where ‘human rights’ activists do reach out to ‘Human Rights’, Hopgood insists, this is for instrumental reasons, for example, to create alliances between actors whose substantive beliefs differ or to connect with transnational networks. Reading between the lines, what Hopgood seems to be saying is this: that although domestic actors may find it useful to work with international NGOs for practical reasons (i.e. to access financial resources or to gain media coverage), the international human rights law regime *itself*; that is, international human rights law norms and mechanisms, have little of value to offer.<sup>592</sup>

Johansson, an Amnesty International staffer, concurs with Hopgood about the existence of a structural separation between the two approaches. He makes the case that:

Even though we can certainly find individual people occasionally bridging this gap, there really is a structural difference between *Human Rights* (the international regime) and *human rights* (the grassroots movements), and the most important factor here is power, both between the two levels and within them.<sup>593</sup>

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<sup>592</sup> Hopgood, *The Endtimes of Human Rights*.

<sup>593</sup> Frank Johansson, "The Question of Power, a View of a Critical Insider," in *Debating the Endtimes of Human Rights: Activism and Institutions in a Neo-Westphalian World*, ed. Doutje Lettinga and van Lars Troost (s.l.: Amnesty International Netherlands, 2014). Available at [https://www.amnesty.nl/content/uploads/2016/12/debating\\_the\\_endtimes\\_of\\_human\\_rights.pdf?x97451](https://www.amnesty.nl/content/uploads/2016/12/debating_the_endtimes_of_human_rights.pdf?x97451) [Accessed 1 Feb. 2016]. 53.

Yamin has made a similar observation, although not in reference to *Endtimes*. She contends that the work of social movements which use human rights has remained ‘somewhat divorced from that of the mainstream human rights community’.<sup>594</sup> She has even suggested that ‘human rights groups that seek to infuse meaning into international norms can be at odds with groups that use rights language instrumentally to promote their visions of social justice’.<sup>595</sup>

Other observers vehemently disagree with Hopgood’s characterisation of the relationship between ‘Human Rights’ and ‘human rights’. According to Rodriquez-Garavito, the framework presented in *Endtimes* ‘tends to miss the many connections and collaborations between the worlds of HR and hr’.<sup>596</sup> He invokes, by way of making his case, the struggle fought by the mothers of the ‘disappeared’ during Argentina’s military dictatorship to find out what had happened to their children. He claims that they:

probably would not have met their objectives without the support of HR organisations like the Inter-American Commission on Human Rights (that visited Argentina at a key moment in the late 1970s) and Human Rights Watch (that lobbied the US government to pressure the Argentinean military officials in power to respect human rights).<sup>597</sup>

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<sup>594</sup> Yamin, "The Future in the Mirror: Incorporating Strategies for the Defense and Promotion of Economic, Social and Cultural Rights into the Mainstream Human Rights Agenda." 1239.

<sup>595</sup> *Ibid.* 1240.

<sup>596</sup> Cesar A. Rodriquez-Garavito, "Towards a Human Rights Ecosystem," in *Debating the Endtimes of Human Rights: Activism and Institutions in a Neo-Westphalian World*, ed. Doutje Lettinga and van Lars Troost (s.l.: Amnesty International Netherlands), 2014. Available at [https://www.amnesty.nl/content/uploads/2016/12/debating\\_the\\_endtimes\\_of\\_human\\_rights.pdf?x97451](https://www.amnesty.nl/content/uploads/2016/12/debating_the_endtimes_of_human_rights.pdf?x97451) [Accessed 1 Feb. 2016]. 41.

<sup>597</sup> *Ibid.* 40.

Barnett, meanwhile, maintains that ‘the relationship with human rights is more complicated and mutually nourished than [Hopgood] suggests’ and that ‘the chance of success for grassroots activists improve[s] from the existence of international legal norms and presence of Western moralisers [...]’.<sup>598</sup> He also suggests that we may be ‘consumed by overly romantic notions of people responsible for their own liberation’ and that ‘sometimes progress depends on bleeding-heart liberals taking an interest in the lives of others’.<sup>599</sup> This is, of course, a controversial statement in view of post-colonial critiques of the ‘white saviour complex’.<sup>600</sup> It does, however, chime with Lockwood’s contention that civic activists are generally drawn from the elites although Lockwood’s arguments are made in reference to domestic elites and not to ‘Western moralisers’ seeking to ‘liberate’ the oppressed in the global South.<sup>601</sup>

#### **6.4. The Right to Food Campaign’s Strategies**

This section turns to the strategies used by the Right to Food Campaign, examining the following in turn: litigation, social mobilisation (i.e. organising rallies and demonstrations), media advocacy, lobbying parliamentarians, and taking up positions on the National Advisory Council.

##### **6.4.1. Litigation**

Hopgood, although highly critical of the International Criminal Court, has little to say about the relevance of domestic-level litigation to the world of lowercase ‘human rights’. One could assume, however, that as litigation is a ‘disciplined and institutional’

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<sup>598</sup> Michael Barnett, "What's So Funny About Peace, Love, and Human Rights?," *ibid.* 20.

<sup>599</sup> *Ibid.* 20.

<sup>600</sup> Teju Cole, "The White-Savior Industrial Complex," *The Atlantic* 21 March 2012. Available at <https://www.theatlantic.com/international/archive/2012/03/the-white-savior-industrial-complex/254843/> [Accessed 4 Jan. 2018].

<sup>601</sup> Lockwood, "Civic Integration and Class Formation."

strategy, Hopgood would not deem it to be especially useful. Numerous other critics of human rights have questioned human rights actors' perceived overreliance on litigation. As discussed, many observers see the law, along with other formal institutions, as having a strong tendency to reflect and reproduce dominant relations of power. In consequence, the middle classes are often able to 'capture' the courts,<sup>602</sup> with those cases 'affecting the middle class draw[ing] much stronger orders' than those affecting the poor in some countries.<sup>603</sup> In addition, other observers insist, the '[u]se of legal mechanisms disempowers the poor, the marginalised and wider social movements by delegating crucial social issues to gatekeeping lawyers, conservative judges and distant international courts and committees'.<sup>604</sup>

Other scholars who have analysed the role of litigation in struggles for social change have emphasised that a distinction needs to be made between litigating in isolation from social mobilisation and litigating in tandem with it. Epp, for instance, has contended that litigation is successful when legal actors can rely on 'support structures' within civil society which provide information and other resources.<sup>605</sup> Rodríguez-Garavito, equally, has argued that legal interventions that are carried out in sync with civil society can open up spaces for issues of concern to civil society to be addressed.<sup>606</sup>

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<sup>602</sup> Daniel M. Brinks and Varun Gauri, "The Law's Majestic Equality? The Distributive Impact of Judicializing Social and Economic Rights," *Perspectives on Politics*, Vol. 12, No. 2 (2014): 375-93.

<sup>603</sup> Malcolm Langford, "The Justiciability of Social Rights: From Practice to Theory," in *Social Rights Jurisprudence: Emerging Trends in International and Comparative Law*, ed. Malcolm Langford (Cambridge: Cambridge University Press, 2009). 38.

<sup>604</sup> *Ibid.* 34.

<sup>605</sup> Epp, *The Rights Revolution: Lawyers, Activists, and Supreme Courts in Comparative Perspective*.

<sup>606</sup> César Rodríguez-Garavito, "Beyond the Courtroom: The Impact of Judicial Activism on Socioeconomic Rights in Latin America," *Texas Law Review* Vol. 89 (2010): 1669-98.

The Right to Food Campaign used litigation in close coordination with its other activities. In this regard, Bharka, a member of the Right to Food Campaign's Steering Group remarked: 'You see, the Supreme Court case is one tool for us. It is not that we are sticking to that only'.<sup>607</sup> Not only did the Right to Food Campaign support the litigation by providing a 'support structure' to the lawyers – for example, by carrying out research to undermine the claims made by the state in court<sup>608</sup> – they used the court orders to mobilise NGO, social movement and trade union activists. As noted above, scholars have claimed that activists become *demobilised* when they resort to the courts. But in the case of the work Right to Food Campaign there *was* no social mobilisation around the right to food, at least not at a state-wide or national level, until the Supreme Court started to issue progressive court orders. The Right to Food Campaign used the court process to mobilise NGO activists and rights claimants, first around the implementation of the court orders and later to generate political pressure for the enactment of the right to food law.<sup>609</sup> In the 2001 to 2013 period hundreds of public meetings, rallies, sit-ins and marches were held around the country, both in support of the orders of the court and the enactment of a right to food statute. Therefore, rather than serving as an instrument of *disempowerment*, the right to food case *empowered* the Right to Food Campaign.

Krishna, a leading figure in the Right to Food Campaign, explained how the campaign used the court orders:

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<sup>607</sup> Interview with Bharka (pseudonym) on 4 September 2014, India.

<sup>608</sup> Human Rights Law Network, *Right to Food*.

<sup>609</sup> Hertel, "Hungry for Justice: Social Mobilization on the Right to Food in India." 84.

[...] I would suppose that because there was so much preparedness in Rajasthan, there was a great opportunity and when they went to court [...]; and the court passed these orders in November 2001 which universalised the ICDS, the midday meal and so on, it created a national momentum which was unbelievable. [...] People really started seeing it for what it was, a situation of hunger amidst plenty.<sup>610</sup>

Shoma, another leading member of the campaign, expressed a similar view. She suggested that the Supreme Court orders:

have been very effectively used by the state campaign. [...] [T]he Supreme Court orders were very supportive, were very useful at the grassroots level for people [...] to show what demands they are making [...]. So I believe that the Supreme Court orders have contributed significantly to the Right to Food Campaign and the movement nationally.<sup>611</sup>

The perspective of these interviewees is supported by the findings of Hertel's study of the Right to Food Campaign's social mobilisation. Her work demonstrated that there was a strong link between the number of Right to Food Campaign protest events held in particular states and the implementation or non-implementation of the Supreme Court orders in those localities.<sup>612</sup>

If the analysis presented above is accurate (it is at present limited by the fact that the author was unable to interview the rights claimants who participated in the protests<sup>613</sup>)

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<sup>610</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>611</sup> Interview with Shoma (pseudonym) on 14 August 2014, India.

<sup>612</sup> Hertel, "Hungry for Justice: Social Mobilization on the Right to Food in India."

<sup>613</sup> Please see Chapter 3 for further information about this thesis' limitations.



it would undermine the contention that resorting to the courts dampens popular mobilisation; in this case, the opposite seems to have been true, perhaps because in some circumstances the ‘law [can] offer campaigns moral capital and legitimacy [...]’.<sup>614</sup>

#### 6.4.2. Social mobilisation

As explained above, Hopgood views bottom-up, spontaneous mass mobilisation as a core tactic of lowercase ‘human rights’. In the case of the Right to Food Campaign, however, while social mobilisation – around the campaign for the right to food act as well as around the court orders – *was* a central tactic, rather than ‘mass’, it was limited in scale, and rather than ‘spontaneously erupting’ from the bottom up, it was planned from the top down.

Being a ‘mobilisation organisation’ is an important dimension of the Right to Food Campaign’s ‘self-narrative’. The leading campaign member Krishna explained that ‘there are two sides to our work; there is the court work, which is based on constitutional law, and there is the campaign work which is people’s mobilisation, working with people’s groups [...]’.<sup>615</sup> Shoma, in reference to her work mobilising the collectives of women she worked with in her state, explained along similar lines that:

[W]omen’s voices from the grassroots need to be linked to the national campaign. [This] has been one of the very strong strategies of [our organisation]. No campaign could be successful without having people’s voices so advocacy and policy-making at

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<sup>614</sup> Paul Gready, "Introduction," in *Fighting for Human Rights* ed. Paul Gready (London: Routledge, 2004). 2.

<sup>615</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

national level, at Delhi level, at [the state capital] level was not adequate. There have to be voices and experiences of women.<sup>616</sup>

Many of the individuals interviewed for this study were directly involved in the organisation of protests and rallies. Jayati, for example, the director of an NGO that works on civic governance, explained how her organisation:

helped to create awareness about [the right to food statute] process by calling these state-level meetings and district-level meetings and making all the NGOs interested in the right to food aware of this and enabling them to participate in those discussions and to go, you know, to rallies, and to have local protests.<sup>617</sup>

She went on to remark that, ‘when the national campaign was happening for the food security act, we all participated in the Jantar Mantar<sup>618</sup> campaigns and that was very exciting’.<sup>619</sup>

Critical ‘non-members’ also saw the campaign as a ‘mobilisation organisation’. Sita, a rural development and farmers’ rights activist, attributed the campaign’s effectiveness in part to the fact that ‘[t]hey were on the streets’.<sup>620</sup> Sukrit, an NGO activist ‘non-member’ working with small producers similarly remarked that the right to food act, ‘didn’t come from air; it came from grassroots initiatives; grassroots struggles’.<sup>621</sup>

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<sup>616</sup> Interview with Shoma (pseudonym) on 14 August 2014, India.

<sup>617</sup> Interview with Jayati (pseudonym) on 25 August 2014, India.

<sup>618</sup> ‘Jantar Mantar’ is an area in New Delhi near to India’s parliament and other state buildings where demonstrations are regularly held.

<sup>619</sup> Interview with Jayati (pseudonym) on 25 August 2014, India.

<sup>620</sup> Interview with Sita (pseudonym) on 1 September 2014, India.

<sup>621</sup> Interview with Sukrit (pseudonym) on 1 September 2014, India.

Several members of the Right to Food Campaign linked the social mobilisation work they were doing to the electoral process. Krishna, for example, remarked: ‘Why are the political parties engaging with us? Political parties are engaging with us because we bring them the legitimacy of the people [...] we claim to represent’.<sup>622</sup> Bharka also maintained that: ‘the thing is, no political party could afford to say no to [the right to food] act; because after all, it’s politics. So everybody, all the parties in public, they say: “Oh, we are for this!”’<sup>623</sup>

While social mobilisation was undoubtedly an important Right to Food Campaign tactic, it seems to have been fairly limited in scale and difficult to ‘[s]ustain [...] over time even in states with a history of involvement in the RTF campaign’.<sup>624</sup> Hertel attributes this to ‘the gap between elite and popular participants in the campaign’ and the fact that the campaign was dominated by people with NGO backgrounds rather than social movement activists, noting that ‘[e]ngaging expert knowledge in defence of the right to food takes place at one level, while popular education and empowerment happen at another’.<sup>625</sup>

She cites a lawyer who was centrally involved in the campaign as contending that:

In the early period (2003–09), [the Campaign] really had the potential to convert itself into a mass movement. *Godowns*<sup>626</sup> were full of grain. People were hungry. They could be mobilized to use their social and collective strength to get that grain. This initiative

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<sup>622</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>623</sup> Interview with Bharka (pseudonym) on 4 September 2014, India.

<sup>624</sup> Hertel, "Hungry for Justice: Social Mobilization on the Right to Food in India." 85.

<sup>625</sup> *Ibid.* 85.

<sup>626</sup> Warehouses.

would be completely outside legal processes. It would have changed the nature of the campaign. But that needed social movement people and organizations in the leadership. We lacked that. NGOs and an NGO way of thinking crippled the campaign.<sup>627</sup>

The limited scale of the mobilisation was affirmed by Nidhi, a former campaign member. She explained:

You need to understand what is the public mobilisation. The campaign works as hard on mobilising as it does on getting media coverage of it. This is what I mean by manufacturing consent. Because the mobilisation is weak, they work on amplifying it through the media. The mobilisation wasn't as powerful as it could have been.<sup>628</sup>

In addition, rather than 'spontaneously erupting' from below, the Right to Food Campaign's rallies and sit-ins seem to have been planned from the top down. Nidhi explained:

So when there is a big mobilisation for Delhi, there are these planning meetings and each state is told, 'you have to bring so many people'. Or they say that 'okay, I think we can get so many' and 'we will get so many' and 'we will get so many'. And within the state they will have a coordination meeting and then they will say, 'okay, we will mobilise 200, 300', whatever it is. And often it's [the NGO] that will pack trucks and bring them [the rights claimants] from the areas that they have been working in for years and years.<sup>629</sup>

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<sup>627</sup> Hertel, "Hungry for Justice: Social Mobilization on the Right to Food in India." 85.

<sup>628</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

<sup>629</sup> *Ibid.*

Nidhi's description of the nature of the social mobilisation is supported implicitly by the language used by other informants. Jayati, the director of an NGO that works on civic governance, for example, talked about '*bringing*' and '*taking*' people to participate in the protests:

[T]he state level coordinator, she did *bring* about ten people when we went [...] for the national convention. We have *taken* a whole lot of people from here then. I don't remember to Jantar Manter how many people. There were people from other districts who were *brought* to Jantar Manter (emphases added).<sup>630</sup>

While 'NGO thinking' may well have constrained the mobilisation potential of the Right to Food Campaign, as Hertel suggests, Nidhi proposed an additional reason. She pointed to the fact that the vast majority of the rights claimants were living in abject poverty and 'are just so involved with their day to day survival' that 'it's hard for them to step back' and engage with the work of campaigners.<sup>631</sup> She also explained that many rights claimants are simply too poor to travel to out-of-town protests without assistance, remarking that: 'Nobody can afford [to travel]'. Nidhi proceeded to clarify: 'See, there's a lot of variation so it's very hard to give a very clear [answer of] "it's like this", "it's like that."' She then gave an example of a labour union whose members did travel to out-of-town demonstrations under their own steam, although she felt that this type of participation was rare. She explained that the union members 'will come unreserved in trains without spending any money even though it means quite a miserable journey

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<sup>630</sup> Interview with Jayati (pseudonym) on 25 August 2014, India.

<sup>631</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

because it's quite long [...]; really it's very difficult [...]. But even that is mediated through the union leadership'.<sup>632</sup> Nidhi's take on the difficulties faced by the rights claimants in participating in the campaign's rallies and demonstrations brings Barnett's earlier-noted assertions to mind. Barnett suggested that we may be 'consumed by overly romantic notions of people responsible for their own liberation' and that 'sometimes progress depends on bleeding-heart liberals taking an interest in the lives of others'.<sup>633</sup> While this contention may be unpalatable – ethically and politically – the fact that there are people in the world who lack the most basic of moral and material resources,<sup>634</sup> are not political organised and may struggle to become politically organised due to the absence of moral and material resources cannot be ignored.

#### 6.4.3. Media Advocacy

The campaign engaged extensively with the media during both the litigation and the statute phases of the campaign. As noted above the campaign was able to secure extensive coverage of the protests and rallies. It also obtained coverage of the court processes, the campaign for the right to food act, and campaign positions on a variety of issues.<sup>635</sup> In addition, campaign activists were able to draw the media's attention to the 'hunger deaths' that continued to take place in various parts of the country, leading to the publication of a series of hard-hitting media articles. According to Nidhi, the campaign's work with the media was facilitated by the fact that few media outlets in India have permanent field reporters. The campaign was therefore able to present itself as a valuable source of information as to what was happening 'on the ground'. Nidhi's

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<sup>632</sup> Ibid.

<sup>633</sup> Barnett, "What's So Funny About Peace, Love, and Human Rights?." 20.

<sup>634</sup> Lockwood, "Civic Integration and Class Formation."

<sup>635</sup> The Right to Food Campaign has archived numerous media articles about its work on its website. Please see: <http://www.righttofoodcampaign.in/food-act/articles> [accessed 13 Mar. 2018].

understanding of the nature of field reporting in India was confirmed by Meena, a ‘non-member’ journalist and activist working on agriculture and rural development.<sup>636</sup>

#### 6.4.4. Lobbying

During the statute phase of the campaign, another uppercase ‘Human Rights’ tactic, lobbying parliamentarians, was also employed. The Right to Food Campaign wrote repeatedly to members of parliament to lay out their demands in respect of the content of the proposed right to food act. According to Bharka, they ‘met each and every MP minimum five times [...]. And you go and see in their files; five times we have given all the documents’.<sup>637</sup> In some states at least, the rights claimants were also involved in lobbying key decision-makers. Shoma said that ‘the collectives [of women rights claimants] have spoken to their own members of [the] legislative assembly; they have spoken with their MPs [...]. [P]eople have really engaged with their elected members [and] made them accountable towards people’s rights’.<sup>638</sup> In addition, in Delhi, academics working with the campaign encouraged their students to meet with their elected representatives and press them to support the bill.<sup>639</sup> Throughout this process, the campaign also used the media to challenge government positions on various aspects of the content of the proposed right to food act. Key focus areas in this regard were: the ‘means-testing versus universalisation’ debate; the debate surrounding which food items were to be included in the Public Distribution System; and the debate regarding whether to dismantle the Public Distribution System in favour of a system of cash

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<sup>636</sup> Interview with Meena (pseudonym) on 19 August 2014, India.

<sup>637</sup> Interview with Bharka (pseudonym) on 4 September 2014, India.

<sup>638</sup> Interview with Shoma (pseudonym) on 14 August 2014, India.

<sup>639</sup> Please see: [Food Security Bill - MPs clueless](https://kafila.online/tag/national-food-security-bill-2013/) (Ankita Aggarwal, Kafila, 5 May 2013). <https://kafila.online/tag/national-food-security-bill-2013/> [accessed 18 Mar. 2018].

transfers, an initiative that the Right to Food Campaign vehemently opposed for a number of reasons.<sup>640</sup>

As noted, Hopgood and Sharp are sceptical about the effectiveness of lobbying as a tool with which to advance human rights, with Hopgood contending that lobbying is only effective when the interests of the lobbyist and the ‘lobbied’ coincide. The work of the Right to Food Campaign, however, underscores the fact that lobbying can be used in different ways. For the Right to Food Campaign, lobbying was never intended to stand on its own; it was carried out to support the wider work that the campaign was undertaking, including the social mobilisation work. As Poonam remarked: ‘There was advocacy [of parliamentarians] but advocacy happens [by creating] political will so you have to lobby on the streets in Jantar Mantar, educate large numbers of people, you have to create pressure and fight’.<sup>641</sup>

#### 6.4.5. The National Advisory Council

The dilemma of whether or not to participate directly in the institutions of states and international organisations – i.e. by taking up positions within those organisations – is one that many civil society actors have had to grapple with. In the case of the international Jubilee 2000 campaign to ‘drop the debt’ of poor Southern nations, discord around this issue contributed to a ‘split within the movement with some Southern campaigners going on to form Jubilee South, arguing that it was a waste of time trying to engage the institutions whose values they fundamentally opposed and

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<sup>640</sup> One of the main reasons for the campaign’s opposition to cash transfers was the lack of adequate banking infrastructure in rural areas which meant that programme beneficiaries would have to travel significant distances to access a bank.

<sup>641</sup> Interview with Poonam (pseudonym) on 1 August 2014, India.



whose structures for decision-making had no legitimacy'.<sup>642</sup> Similar scepticism towards participating in international organisations has been exhibited by right to food defenders. For example, a right to food defender interviewed by Claeys was extremely pessimistic about the impact of engaging with institutions. He asserted: 'The human rights movement has not achieved anything. On association agreements,<sup>643</sup> we gained access to political spaces but we were not seriously taken into account. We achieved them giving us the impression that they were listening to us'.<sup>644</sup>

In 2010 the Right to Food Campaign had to decide whether to take up 'insider' positions on a governmental body when Jean Dreze and Harsh Mander were invited to sit on the second 'National Advisory Council' (commonly referred to as 'NAC II'). This body was set up under the chairpersonship of Congress Party President Sonia Gandhi. The first National Advisory Council (NAC I) was created in 2004 within a few weeks of the formation of the previous government (the Congress Party-led 'UPA I' government) also with Sonia Gandhi at its helm. UPA I was, as with UPA II, headed up by Prime Minister Manmohan Singh.<sup>645</sup> Formally, NAC I had a mandate to 'monitor the progress of the implementation of the Common Minimum Programme', the legislative agenda that coalition and 'confidence and supply' parties had agreed upon. It was also mandated to 'provide inputs into the formulation of policy by the Government and to provide support to the government in its legislative business'.<sup>646</sup>

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<sup>642</sup> Buxton, "Debt Cancellation and Civil Society: A Case Study of Jubilee 2000." 59.

<sup>643</sup> Association Agreements are bilateral agreements between the EU and a third country. The EU typically concludes Association Agreements in exchange for commitments to human rights, political, economic or trade reforms.

<sup>644</sup> Claeys, *Human Rights and the Food Sovereignty Movement: Reclaiming Control*. 117.

<sup>645</sup> Sanjaya Baru, *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh* (New Delhi: Penguin, 2014).

<sup>646</sup> Cabinet Secretariat Order No. 631/2/1/2004-Cab, dated 31 May 2004 quoted in Sharma, *Democracy and Transparency in the Indian State - the Making of the Right to Information Act*. 55.

However, it is generally accepted that, in reality, ‘[t]he NAC was a peculiar entity, with no constitutional precedence [that was] [...] created to accommodate Congress Party President Sonia Gandhi so that she could have a say in government policy’.<sup>647</sup> Sonia Gandhi, as a member of the eminent Nehru-Gandhi dynasty, was a popular and powerful politician who, many observers have argued, would likely have been appointed Prime Minister in 2004 had it not been for her ‘foreign origins’ (born in Italy, Sonia Gandhi moved to India in her twenties to marry Rajiv Gandhi, one of Indira Gandhi’s sons and Jawaharlal Nehru’s grandsons).<sup>648</sup>

Some members of the Right to Food Campaign were sceptical about the campaign positions on NAC II. According to the leading campaign member Krishna: ‘[T]here was a perception that we were particularly close to the last government [...] because of [our participation in] the National Advisory Council [...]. A lot of people felt that, you know, you are sleeping with the enemy’.<sup>649</sup> He went on to reflect that: ‘some of the criticism was right and some of the criticism was valid and some of the criticism has given us a lot of room to reflect on, and a lot of that criticism came internally from the campaign’.<sup>650</sup> However, Krishna did, nonetheless, see the utility in participating in the NAC:

Do we have any business sitting there? But the issue is what do you do? Would you rather be sitting there drafting or be holier than thou and be out? And let some bureaucrat draft it? Because the choices we have to make are stark. So you have to keep one foot in and one foot out. So I think there is a lot of pragmatism in this

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<sup>647</sup> Ibid. 55.

<sup>648</sup> Baru, *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh*.

<sup>649</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>650</sup> Ibid.

campaign and I think there are a lot of things that are unique about it that have allowed it to have this space [in the NAC] but it comes with its fair share of [pause]; I'm not saying that everyone should agree with our view. I think on many occasions we could have been more careful in our engagement with the state.<sup>651</sup>

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<sup>651</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

#### 6.4.6. Eliciting the Support of Uppercase ‘Human Rights’

The ‘Global Human Rights Regime’ is usually considered to be of value to lowercase ‘human rights’ for two reasons. The first relates to the perceived legitimacy of the international human rights law framework. Because international human rights law is a ‘legitimate’ framework that states have voluntarily agreed to be bound by, the argument goes, making reference to it or framing one’s demands as international human rights law claims serves to ‘legitimate[s] the claims of the marginalised’.<sup>652</sup> Proponents of uppercase ‘Human Rights’ have suggested that international human rights law lends legitimacy to everything from progressive food policy which ‘would be more easily contested’, at the international level in the absence of international human rights law,<sup>653</sup> to development processes and plans,<sup>654</sup> and corporate responsibility frameworks.<sup>655</sup>

The second reason why domestic human rights activists are considered to benefit from uppercase ‘Human Rights’ is that uppercase ‘Human Rights’ is seen as being able to influence decision-makers that lowercase ‘human rights’ cannot reach. These could be actors in the international sphere such as the World Trade Organization and the International Monetary Fund or duty-bearers at the domestic level. Keck and Sikkink have famously referred to the capacity of international actors to influence domestic actors as the ‘boomerang effect’. They contend that ‘[w]hen the links between state and

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<sup>652</sup> Fadaee, "Civil Society Organisations in India and Construction of Multiplicity of Human Rights." 5.

<sup>653</sup> Olivier De Schutter, "Integrating the Right to Adequate Food in Development Cooperation," (Geneva: OHCHR, 2008).

<sup>654</sup> Geraldine van Bueren, ed. *Freedom from Poverty as a Human Right: Law's Duty to the Poor - Volume 4* (Paris: UNESCO, 2010). 109.

<sup>655</sup> For example, please see the Global Business Initiative on Human Rights in which numerous actors that tend to be engaged in uppercase ‘Human Rights’ have engaged: <https://gbihr.org/> [accessed: 3 Mar. 2018].

domestic actors are severed, domestic NGOs may directly seek international allies to try to bring pressure on their states from outside'.<sup>656</sup> According to Keck and Sikkink, 'international contacts can "amplify" the demands of domestic groups, pry open space for new issues, and then echo these demands back into the domestic arena'.<sup>657</sup> Other observers disagree with this optimistic understanding of the effects of international law. Kennedy, for example, argues that the human rights movement is caught in a series of traps that limit political imagination and action through an overestimation of the value and power of international law.<sup>658</sup>

In the case of the Right to Food Campaign, with one exception, there *was* a disconnect between their work and the work of uppcase 'Human Rights'. In their dealings with India's decision-makers and in their rhetoric aimed at influencing public opinion, the campaign considered it neither useful to invoke international human rights law nor to enlist the support of uppcase 'Human Rights'.

The leading campaign member Poonam explained that:

But you must see that the campaign in India clearly has not found its *raison d'être* from the UN conventions. Unlike other campaigns, we have never quoted the UN conventions to advocate with the government that, you know, you are responsible because you are a signatory to this convention and that convention and that convention. We've had a very very indigenous position. [...] [W]e will rely on our constitutional mandate and that is what the court case gave us.<sup>659</sup>

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<sup>656</sup> Margaret E. Keck and Kathryn Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics* (Ithaca: Cornell University Press, 2014). 12.

<sup>657</sup> *Ibid.* 93.

<sup>658</sup> Kennedy, *The Dark Sides of Virtue: Reassessing International Humanitarianism*.

<sup>659</sup> Interview with Poonam (pseudonym) on 1 August 2014, India.

Krishna, who engaged with international human rights actors in other fora during this period, even inviting the former UN Special Rapporteur on the Right to Food, Olivier De Schutter, to Delhi to assist the rapporteur with his reporting, concurred. He explained: '[T]he river of rights in India does not flow from international covenants. The river of rights flows from our constitution and the basis for rights in India has been in the constitutional law'.<sup>660</sup> He proceeded to qualify his response slightly, explaining that the campaign did in fact use international human rights law in their legal work: '[I]t's not that we've not cited it. Of course we've cited international law. We've used it in our affidavits. We've gone to court on points of international law, but that is not the foundation of our work, the foundation of our work is domestic'.<sup>661</sup> He went on to explain that he did not believe that an intervention by the 'Global Human Rights Regime' would hold sway with the Indian government.

I am on the board of Amnesty [...]. [...] [I]f they feel the need to take it [the right to food] up then of course I will be completely supportive. [...] I don't think it is needed also. They know that we are doing a good job, a credible job. Would we benefit much if Amnesty issues a statement on the right to food? No we won't. What is the value added by Amnesty coming to India and supporting us on right to food? I don't think there is value added. And they also realise that. But if I was to ask them that this is happening will you issue a statement in support they would certainly do that.<sup>662</sup>

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<sup>660</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>661</sup> Ibid.

<sup>662</sup> Ibid.

Anil concurred with Krishna's analysis: 'Once in a while we invoke these things [international law] and I think there is no harm, but I think it doesn't carry that much weight. I think India has its own foundations which I think are pretty good actually; in the constitution, the directive principles and all that. And I think rightly so more importance is attached to that than to international conventions'.<sup>663</sup>

Pramila, meanwhile, had a more nuanced take on the utility of international human rights law. At first she responded: 'No [it would not be useful to raise the Indian state's international legal obligations]. Which government takes international treaties seriously?' Then, on reflection, she clarified her response:

Except the military treaties. Except the military treaties. [...] Your government will also not take the food issue seriously. That's the thing [...]. But [international human rights law may be more useful for] particular types of violations. Torture and war crimes are political issues because you are talking about the land and territory and nation state, so they are useful when the nation state is involved. [...] They will take it seriously if UN is talking on the Kashmiri issue, but that is something which is hurting and will make a difference [...]. So it depends also issue to issue I think.<sup>664</sup>

Overall, despite Pramila's more nuanced position, the Right to Food Campaign's understanding of the utility of uppercase 'Human Rights' supports Hopgood's contention that there is a disconnect between the two approaches, although as Krishna noted, the campaign did use international human rights law in their legal work. At the same time, numerous works published in recent years indicate that the international

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<sup>663</sup> Interview with Anil (pseudonym) on 27 August 2016, India.

<sup>664</sup> Interview with Pramila (pseudonym) on 6 September 2016, India.

human rights law regime *has* been of value to domestic actors engaged in human rights and social justice struggles. In addition to Keck and Sikkink's<sup>665</sup> work is that of Simmons,<sup>666</sup> Landman,<sup>667</sup> Risse<sup>668</sup> and Sally Engle Merry (although Merry contends that domestic actors often 'vernacularise' international human rights law in order that it resonates more closely with existing beliefs and social practices).<sup>669</sup> Equally, other studies have indicated that not only is the international human rights law regime *not* useful; resort to it can, in some circumstances, be counterproductive. An oft-cited example of such a case is that of a woman named Amina Lawal in Nigeria. She had been convicted for adultery and sentenced to death by stoning. Human Rights Watch and Amnesty International organised a campaign to put pressure on an Islamic court in Nigeria that was hearing her appeal. But a small local organisation called Baobab asked for the campaign to be halted because it misrepresented the facts of the case and angered local politicians, religious leaders and judges, and made Baobab's ability to assist Lawal more rather than less difficult.<sup>670</sup>

## 6.5. Summary

A key critique of human rights has been that the main strategies used by human rights advocates – such as litigation, awareness-raising, 'slacktivist'<sup>671</sup> campaigning and lobbying – are incapable of generating meaningful social change. Most prominent

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<sup>665</sup> Keck and Sikkink, *Activists Beyond Borders: Advocacy Networks in International Politics*.

<sup>666</sup> Beth A. Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge: Cambridge University Press, 2009).

<sup>667</sup> Todd Landman, *Protecting Human Rights: A Comparative Study* (Washington: Georgetown University Press, 2005).

<sup>668</sup> Thomas Risse-Kappen, Stephen C. Ropp, and Kathryn Sikkink, eds., *The Power of Human Rights: International Norms and Domestic Change* (Cambridge: Cambridge University Press, 1999).

<sup>669</sup> Merry, *Human Rights & Gender Violence - Translating International Law into Local Justice*.

<sup>670</sup> Nash, *The Political Sociology of Human Rights*. (In the end, the court reversed Lawal's conviction).

<sup>671</sup> Lee, Yu-Hao, and Gary Hsieh. "Does slacktivism hurt activism?: the effects of moral balancing and consistency in online activism." *Proceedings of the SIGCHI Conference on Human Factors in Computing Systems*. ACM, 2013.



perhaps is the critique that human rights actors rely too heavily on litigation.<sup>672</sup> However, to those of us who have observed the consumer boycotts, divestment campaigns and popular protests that have been instigated in the name of human rights, this view of human rights as essentially synonymous with the narrow range of strategies referred to above makes little sense.<sup>673</sup> Hopgood's observation that there are different *approaches* to human rights provides an explanation as to why human rights can be understood in very different ways by different spectators. In this sense it is an extremely useful analytical tool. That being said, this chapter demonstrated that the Right to Food Campaign used strategies that Hopgood attributes to both lower- and uppercase human rights. Arguably, therefore, Hopgood's typology may need to be amended. It could well be the case that uppercase 'Human Rights' actors restrict their modes of action to disciplined and institutional strategies while lowercase 'human rights' actors use both disciplined and institutional strategies *and* extra-institutional strategies such as consumer boycotts, mass protests and violent disruption.

This chapter also drew attention to an important debate within human rights scholarship: the debate the surrounds whether, when, why and under which circumstances lowercase 'human rights' has call for an intervention by uppercase 'Human Rights'. Various hypotheses could be put forward. Hopgood, for example, suggests that lowercase 'human rights' only calls on its uppercase 'counterparts' for instrumental reasons i.e. to gain publicity for cause or access to particular networks. Were this hypothesis valid, it would raise questions about the value of international human rights law norms and mechanisms for domestic-level human rights struggles.

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<sup>672</sup> See for example Evans, Baxi and Ramon.

<sup>673</sup> i.e. Bob, Gready.

Right to Food Campaign activists, equally, argue that their constitution holds more weight with Indian decision-makers than India's international legal obligations. Is it possible that lowercase 'human rights' actors only invoke international human rights law when they lack comparable norms at the domestic level? These and many other issues pertaining to the relationship between lowercase 'human rights' and uppercase 'Human Rights' are worthy of further investigation as they could assist in the development of human rights regimes that are of more utility to grassroots human rights groups.

## Chapter 7: The Legalisation Process: Eschewing Institutions or Infiltrating them?

### 7.1. Introduction

Earlier in the thesis, we saw that the UPA II government intended to use the legislative process to roll back the Supreme Court order-mandated entitlements.<sup>674</sup> If formal institutions, such as those involved in law-making processes, do in fact reflect and reproduce prevailing relations of power, the UPA II government should have been able to achieve its goal. And yet, the Right to Food Campaign was able to avert the government's attempt to *contract* the Supreme Court order-mandated entitlements while at the same time *expanding* the scope of the right to food in India. How was this achieved? And what are the implications of the findings presented in this chapter for debates on the 'legalisation thesis' and the effectiveness of civil society strategies?

Stammers has argued that '[w]hile there is undoubtedly a strong capacity for power to reproduce itself through institutions, it is also the case that institutional processes and structures can be subject to challenge, contestation and transformation'.<sup>675</sup> Stammers fails to explain precisely what he means by 'challenge', 'contest' and 'transform', but the terms 'challenge' and 'contest' presumably refer to attempts by civil society to shape institutional processes and outcomes. However, the proposition that civil society actors are able to challenge and contest institutional processes when the institutions in question are controlled or dominated by actors that are hostile to their goals is not born up by the findings presented in this chapter. When the draft right to food bill and then

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<sup>674</sup> Please see Section 5.4.3 for further information.

<sup>675</sup> Stammers, *Human Rights and Social Movements*. 105.

the actual right to food bill were in the hands of UPA II government-controlled or dominated institutions such as the Ministry of Consumer Affairs, Food and Public Distribution (hereinafter the 'Food Ministry'), the Standing Committee on Food, Consumer Affairs and Public Distribution (hereinafter 'the Standing Committee') and the lower and upper houses of parliament (hereinafter 'the legislature), the Right to Food Campaign was unable to exert any influence on the content of draft bill/the bill in spite of the fact that – as discussed in more detail in the previous chapter – it lobbied parliamentarians, conducted extensive media advocacy and organised dozens of protests involving thousands of people around the country. It was only when the drafting process was taken over by the (Sonia Gandhi-chaired) National Advisory Council – to which, as noted earlier, two Right to Food Campaign members were appointed – that the campaign was able secure the inclusion of some of its claims in the draft bill. This indicates that the presence of a sympathetic but powerful insider within a formal institution may have more of an impact on the outcomes of that institution than civil society efforts to contest or challenge an institution from the outside.

This proposition brings to mind the call of 1970s-era German radicals to 'undertake the long march through the institutions', a phrase coined by the prominent Gramsci-influenced student activist Rudi Dutschke.<sup>676</sup> The objective of the 'long march' was to create radical change from within the government and other societal institutions by becoming an integral part of the machinery of the state and altering the composition of the political elites within state bodies. Clearly, this approach runs counter to the social

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<sup>676</sup> Roger Kimball, *The Long March: How the Cultural Revolution of the 1960s Changed America* (San Francisco: Encounter Books, 2001).

change strategies promoted by many critics of (uppercase) human rights such as Evans and Hopgood who tend to eschew engagement with formal institutions.<sup>677</sup>

However, despite the fact that the Right to Food Campaign was able to secure the inclusion of many of its claims within the draft right to food bill when the draft was in the hands of the National Advisory Council, it failed to obtain National Advisory Council support for two of its most important demands:

- For the Public Distribution System to be universalised; and
- For the government to procure all of the food for the statute's schemes from India's small and medium farmers at a remunerable 'minimum support price' (MSP).

Given the composition of the National Advisory Council and Sonia Gandhi's support for the goals of the Right to Food Campaign,<sup>678</sup> the campaign's inability to secure support for the above two demands cannot be attributed simply to the tendency of formal institutions to reflect and reproduce prevailing power relations. This chapter argues that the campaign's inability to secure NAC support for the universalisation of the Public Distribution System and the inclusion of a provision in the bill requiring the government to procure all of the food for the schemes from India's small and medium farmers can be attributed to three main factors: first, the campaign's inability to allay concerns about the cost of the act to the public purse; second, the campaign's inability to convince the NAC that India produced enough grain to meet the requirements of a

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<sup>677</sup> Hopgood, *The Endtimes of Human Rights*; Evans, *The Politics of Human Rights : A Global Perspective*.

<sup>678</sup> According to Sharma, Sonia Gandhi is broadly supportive of the creation of a social democratic-style welfare state. Please see: Sharma, *Democracy and Transparency in the Indian State - the Making of the Right to Information Act*.

universalised Public Distribution System; and third, the fact that the campaign's representatives on the NAC – Jean Dreze and Harsh Mander – simply failed to push for the MSP agenda in spite of the fact that this was official Right to Food Campaign policy.

The first factor – that is, concerns about the cost of the act to the public purse – draws attention to heterodox economists' calls for social and economic policy to be formulated in tandem with rather than in isolation from each other.<sup>679</sup> The second factor, regarding concerns about the (in)adequacy of food grain production in India, meanwhile, validates the positions of those who pressed for the campaign's 'Essential Demands' to address *production* and *procurement* as well as distribution. The third factor, meanwhile, has implications for our understanding of the consequences of *intra-civil society* relations and power dynamics. It stands to reason that civil society actors with access to 'moral and material' resources are more likely than their comrades to be invited to participate in institutional processes by states. In the case at hand, this appears to have directed power towards the civil society actors who were invited to sit on the NAC. It enabled them to pursue the issues that *they* felt were the most important, rather than the issues that the campaign as a whole had agreed upon.

Finally, the chapter analyses the effectiveness of the campaign's strategies and the extent to which their strategies shaped the content of the right to food act. The chapter argues that although the campaign was unable to influence the content of the proposed

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<sup>679</sup> Diane Elson, "Social Policy and Macroeconomic Performance: Integrating 'the Economic' and 'the Social'," in *Social Policy in a Development Context*, ed. T. Mkandawire (London: Palgrave Macmillan, 2004); Diane Elson and Nilufer Cagatay, "The Social Content of Macroeconomic Policies," *World Development*, Vol. 28, No. 7 (2000): 1347-64.

act while it was in the hands of UPA II-controlled or dominated institutions, its lobbying and social mobilisation activities *did* have an influence on the overall process both in terms of ‘agenda setting’ and in respect of ensuring the passage of the act through the legislature.

The remainder of Chapter 7 is laid out as follows. Section 7.2 briefly describes the passage of the draft bill and then the actual bill through the following UPA II-controlled or dominated institutions: the Food Ministry, the Standing Committee and the legislature. It then demonstrates that the Right to Food Campaign was unable to shape the content of the draft/actual right to food bill while these were in the hands of above-mentioned institutions. Section 7.3 turns to the role of the second National Advisory Council, and analyses how, with the support of Sonia Gandhi, the Right to Food Campaign was able to expand the content of the draft bill. Section 7.4 seeks to explain how and why the campaign was able to make the gains that it made while the draft bill was in the hands of the National Advisory Council while Section 7.5 attempts to make sense of the main losses. Section 7.6 reflects on the extent to which the campaign’s various strategies contributed to the creation of the right to food act and a summary of Chapter 7 is provided in Section 7.7.

## 7.2. The Passage of the Bill and Attempts to Influence it from the ‘Outside’

The contention that formal institutions – including human rights law-making institutions such as courts and legislatures – reflect and reproduce prevailing relations of power in a manner which leads to the dilution or distortion of pre-legalised conceptions of human rights is born up by an analysis of the passage of the draft right to food bill and then the actual right to food bill through the following UPA II government-controlled or dominated institutions: the Food Ministry, the Standing Committee and the legislature. For clarity, before proceeding further, a brief overview of the sequence of the legislative process is provided.

**Table 4: The Legislative Process**

Date	Stage of the Legislative Process
May 2009	The government announces its intention to bring a right to food law onto the statute books within one hundred days. <sup>680</sup>
June 2009	The Food Ministry publishes a ‘concept note’, ostensibly for the purposes of consultation, although little consultation appears to take place. <sup>681</sup>
March 2010	The Food Ministry announces that it has prepared a draft bill to be sent to an ‘empowered group of ministers’ <sup>682</sup> for review, passed to

<sup>680</sup> Newsweek, ‘Singh’s 100-Day Plan to Revolutionize India,’ 6 May 2009 Available at <http://www.newsweek.com/singhs-100-day-plan-revolutionize-india-80609>

<sup>681</sup> Ministry of Consumer Affairs, Food and Public Distribution, Concept Note on the proposed National Food Security Bill (9 June 2009).

<sup>682</sup> According to Baru, the ‘empowered group of ministers’ (EGoM) were constituted around key policies, projects and issues and became substitutes for the full Cabinet because they were empowered to take decisions that the Cabinet subsequently only had to ratify. Please see: Baru, *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh*.



	the Cabinet for final approval and then introduced formally into parliament. The press then announces that a second National Advisory Council, again under the helm of Congress Party President Sonia Gandhi, is to be established.
June 2010	The National Advisory Council meets for the first time and assumes responsibility for the drafting of the right to food bill. <sup>683</sup>
October 2010	The National Advisory Council issues its initial recommendations for the bill. <sup>684</sup>
July 2011	The National Advisory Council publishes a draft right to food bill. This is sent to the Food Ministry which introduces it formally into parliament which then refers it to the Standing Committee for examination and review. <sup>685</sup>
January 2013	The Standing Committee publishes its report. The Food Ministry amends the right to food bill in light of the Standing Committees' recommendations. <sup>686</sup>
March 2013	The Food Ministry reintroduces the amended right to food bill into parliament.
August 2013	The 'right to food act' (formally, the 'National Food Security Act of 2013') is passed.

<sup>683</sup> National Advisory Council Press Release, 10 June 2010, on file with the author.

<sup>684</sup> Right to Food Campaign statement, 'NAC Proposals are Minimalist,' 11 November 2010.

<sup>685</sup> National Advisory Council draft National Food Security Bill (6 July 2011).

<sup>686</sup> Standing Committee on Food, Consumer Affairs and Public Distribution, Report on the National Food Security Bill 2011 (January 2013) Available at: <http://www.prsindia.org/uploads/media/Food%20Security/SC%20Report-Food%20Security%20Bill,%202011.pdf>.

In putting together its first consultation document – the June 2009 ‘concept note’ – the Food Ministry ignored both the Supreme Court order-mandated entitlements and the campaign’s ‘Essential Demands’, and formulated an extremely minimalist set of proposals. The concept note recommended the creation of a statute which rolled back most of the Supreme Court order-mandated entitlements, as explained in more detail in Chapter 5. In response, the campaign,<sup>687</sup> the minor left-wing political parties<sup>688</sup> and some of India’s leading academics<sup>689</sup> conducted extensive media advocacy, lobbied parliamentarians, and organised demonstrations including (according to the Right to Food Campaign) a 5000-strong rally in Delhi attended by activists from 18 states.<sup>690</sup> Granted, the mobilisation at this stage of the campaign was not as strong as many Right to Food Campaign members would have liked, in part because the campaign remained absorbed in the debate over the ‘Essential Demands’.<sup>691</sup> However, none of the Right to Food Campaign’s actions had a discernible impact on the content of the Food Ministry’s proposals. In March 2010 the Food Ministry released a draft bill which was more or less identical in content to the June 2009 concept note.<sup>692</sup> Shortly afterwards, the Food Ministry announced that the draft would be reviewed by an ‘empowered group of ministers’, sent to the Cabinet for approval and then introduced into Parliament.<sup>693</sup> Had the legislative process proceeded as planned, it seems likely that the UPA II

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<sup>687</sup> Example of the various lobbying initiatives, petitions and media reports can be seen on the following webpages: <http://www.righttofoodcampaign.in/food-act/campaign-material-1>; <http://www.righttofoodcampaign.in/food-act/articles>; [accessed: 17 Mar. 2018].

<sup>688</sup> For example, the Communist Party of India (CPI), the Communist Party of India (Marxist) (CPI-M), the All India Forward Block (AIFB) and the Revolutionary Socialist Party (RSP). Further details about the campaign launched by left-wing opposition parties can be seen here: <http://cpim.org/tags/food-security-bill> [accessed 4 Mar. 2015].

<sup>689</sup> For example, please see: Rahul Lahoti and Sanjay G. Reddy, "Right to Food Act: Essential but Inadequate " *The Hindu* 28 July 2009. Available at: <https://www.thehindu.com/todays-paper/tp-opinion/Right-to-Food-Act-essential-but-inadequate/article16564160.ece> [8 Aug. 2015]; Zoya Hasan, "Legislating against Hunger," *ibid.* 27 August 2009. Available at <https://www.thehindu.com/opinion/lead/Legislating-against-hunger/article16877968.ece>. [Accessed 4 Jan. 2018].

<sup>690</sup> Right to Food Campaign, *Brief Report: Rally for the Right to Food*, 26 November 2009 (on file with author).

<sup>691</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

<sup>692</sup> On file with author.

<sup>693</sup> Right to Food Campaign petition rejecting the draft ‘empowered group of ministers’ act. On file with author.

government would have succeeded in enacting a statute which *contracted* the right to food in India, overturning years of successful litigation. However, before the ‘empowered group of ministers’ was able to pass the draft bill to the Cabinet, a second National Advisory Council was set up and it assumed responsibility for the drafting of the bill. The National Advisory Council proceeded to produce a far more substantive draft bill which was then transferred back to the Food Ministry (the role of the National Advisory Council in ‘rescuing’ the draft bill is discussed in the next section of Chapter 7).

Upon receiving the National Advisory Council’s draft bill in July 2011, the Food Ministry tried to weaken it by cutting several components of the schemes that it provided for. For example, it reduced the quantity of food grain available for purchase by people in a particular category of the Public Distribution System from 20kg to 15kg per household; removed the maternity allowance of R1000 per month for pregnant and breastfeeding women; removed the programme providing support and counselling for breastfeeding; and cut the entitlement of destitute and homeless people to a free cooked meal.<sup>694</sup> the time the Food Ministry’s bill was introduced into Parliament on 22 December 2011, the following provisions had been reinserted: the entitlement of pregnant and breastfeeding women to a monthly cash transfer of R1000; and the entitlement of homeless and destitute people to a free, freshly cooked meal (it is not clear why these entitlements were reinserted but several interviewees suggested that Sonia Gandhi had likely intervened). After the draft was introduced into parliament as a bill proper, it was referred to the Standing Committee which was, according to the

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<sup>694</sup> Right to Food Campaign open letter to PM, August 2011; Right to Food Campaign ‘Comparative Table on the two draft versions of the National Food Security Bill’ 13 July 2011.

parliamentary rules of procedure, required to ‘examine’ the bill and hold a public consultation process.<sup>695</sup>

Again, the Right to Food Campaign and its supporters fought hard to influence the content of the bill, this time by trying to influence the Committee’s recommendations. Hundreds of communications were submitted to the Standing Committee by Right to Food Campaign members, other members of civil society, left-wing MPs and international organisations such as UNICEF and the Food and Agriculture Organisation. These communications called for, among other things: the universalisation of the Public Distribution System; the inclusion of a more balanced group of food items such as eggs, pulses and cooking oil in the Public Distribution System; the insertion of a provision requiring the government to procure the food for the schemes from India’s small and medium farmers (MSP); and the value of the cash transfer schemes to be increased i.e. the cash transfers for pregnant women.<sup>696</sup>

Members of the Right to Food Campaign hoped that the Standing Committee ‘would restore the body and soul of a strong food law as it did with the Right to Information Statute’.<sup>697</sup> During the twelve months in which the bill was under review by the Standing Committee, the campaign stepped up its protests around the country. For example, in the run up to World Food Day in October 2012, dozens of *yatras* (processions) were held throughout the country including in Bihar, Chhattisgarh,

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<sup>695</sup> Standing Committee on Food, Consumer Affairs and Public Distribution, Report on the National Food Security Bill 2011 (January 2013) Available at: <http://www.prsindia.org/uploads/media/Food%20Security/SC%20Report-Food%20Security%20Bill,%202011.pdf>. 6.

<sup>696</sup> Most of the submissions are summarised in the Standing Committee report. Please see: Standing Committee on Food, Consumer Affairs and Public Distribution, Report on the National Food Security Bill 2011 (January 2013) available at: <http://www.prsindia.org/uploads/media/Food%20Security/SC%20Report-Food%20Security%20Bill,%202011.pdf>.

<sup>697</sup> An unfinished battle (article by Harsh Mander in the Hindustan Times) 3 February 2013.

Gujarat, Jharkhand, Rajasthan and West Bengal and in December, in the weeks before the publication of the report, numerous *dharnas* (non-violent ‘sit ins’) were held throughout the country.<sup>698</sup> The press coverage surrounding some of these protests quoted members of the campaign warning the government that its electoral prospects would be harmed if it failed to bring in a substantive act.<sup>699</sup> The campaign was supported during this period by a number of minor left-wing opposition parties – the Communist Party of India (CPI), the Communist Party of India (Marxist) (CPI-M), the All India Forward Block (AIFB) and the Revolutionary Socialist Party (RSP). The minor left-wing parties also launched their own campaign in support of an expansive right to food act which culminated in a ‘sit in’ outside of the parliament, reported attended by thousands of people.<sup>700</sup>

However, none of these actions influenced the Standing Committee’s report.<sup>701</sup> This can, presumably, be attributed to the fact that the Standing Committee was made up mainly of Congress Party parliamentarians or supporters. By contrast, the demands put forward by Congress Party parliamentarians *were* included in the Standing Committee’s recommendations. For example, the Committee recommended that the proposed new schemes targeting destitute and homeless people be scrapped on the basis that ‘it would be difficult for the administration to identify destitute and homeless persons’ (here, the Standing Committee had virtually ‘cut and paste’ from a submission

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<sup>698</sup> Reports of the various actions are on file with author.

<sup>699</sup> Nikhil Dey quoted in IBN News available at: <http://www.ibnlive.com/videos/politics/nikhil-long-526816.html>

<sup>699</sup> Jean Dreze quoted in IBN News available at: <http://www.ibnlive.com/videos/india/direct-cash-transfer-jean-dreze-526842.htm>.

<sup>700</sup> Further details about the campaign launched by left-wing opposition parties can be seen here: <http://cpim.org/tags/food-security-bill>.

<sup>701</sup> For the composition of the Standing Committee see Consumer Affairs and Public Distribution Standing Committee on Food, "The National Food Security Bill, 2011," (New Delhi: Ministry of Consumer Affairs, Food and Public Distribution (Department of Food and Public Distribution), 2013). 5.

made by a Congress Party MP).<sup>702</sup> It even parroted the same MP's expression of concern that the creation of such schemes may 'break [...] the social fabric' as families may start to push 'non-earning members [...] out of homes to feed [...] themselves'.<sup>703</sup>

Perhaps unsurprisingly given their provenance, the UPA II government incorporated most of the Standing Committee's recommendations into the bill and then reintroduced it into parliament.<sup>704</sup>

At this stage, the only remaining avenue through which the campaign could shape the content of the bill was by persuading MPs to propose amendments. Over the subsequent two months, several MPs from the minor left-wing parties formulated proposed amendments. Some of these, such as the universalisation of and the inclusion of pulses and cooking oil in the Public Distribution System were goals that the campaign and the left-wing parties shared. Others, such as the proposed amendment entitling destitute people to a free daily meal had clearly been lifted from the campaign's 'Essential Demands'.

After a delay of several months, the bill was scheduled for debate on 26 August 2013. One by one, the left-wing parties' proposed amendments were put to the vote, and one by one, they were voted down.<sup>705</sup> As parties that the UPA II government had no need of in order to form a working coalition, the minor left-wing parties simply had no

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<sup>702</sup> Ibid. [103-104](#).

<sup>703</sup> Ibid. [103-104](#).

<sup>704</sup> National Food Security Bill (reintroduced into parliament on 22 March 2013).

<sup>705</sup> Lok Sabha Debates, Part I – Proceedings with Questions and Answers, Monday, August 26, 2013/Bhadrapada 4, 1935 (Saka).

influence in the legislature. The situation under the previous UPA government (UPA I) which *did* need the support of the left was, as Anil noted, rather different:

[T]his was not like in the UPA I [government]; there was lots of last minute amendments in the Rural Employment Guarantee Act and the reason was that the left parties at that time were part of the coalition and they had a lot of bargaining power; they had a lot of influence on the last minute amendments. But in this case they were not needed so just for the formality they must have put some amendments on the table and then it was ignored and that was it.<sup>706</sup>

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<sup>706</sup> Interview with Anil (pseudonym) on 27 August 2016, India.

### 7.3. Forum Swapping: the Second National Advisory Council

Clearly then, the Right to Food Campaign was unable to influence the content of the draft bill when it was in the hands of UPA II-controlled or dominated institutions. These institutions could not be, as Stammers hypothesised, ‘challenged’ or ‘contested’ – although, as noted above, the Right to Food Campaign’s social mobilisation during this period was not as strong as several campaign members would have liked. However, the establishment of a second Sonia Gandhi-chaired National Advisory Council in March 2010, which appeared to almost ‘snatch’ the drafting process away from the Food Ministry, altered the course of events.

It is difficult to explain why a second National Advisory Council was set up in March 2010. However, given the timing it seems likely, as the leading campaign member Anil speculated, that it was reconvened specifically for the purpose of drafting the right to food bill because Sonia Gandhi – likely with the support of other left-leaning Congress Party politicians – were unhappy with the government’s plans for the proposed right to food act. Anil explained:

[M]y impression is that the NAC was reconvened largely, if not mainly, for the purpose of drafting the National Food Security Act in a form that would be acceptable [...]. I mean, the first year of the second NAC was spent mostly on the Food Security Act and in fact, what is there, is pretty much the only thing that the NAC II achieved. [...] [B]ut that is a question only they [the Congress Party] can answer.<sup>707</sup>

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<sup>707</sup> Interview with Anil (pseudonym) on 27 August 2016, India.



The campaign certainly tried to get Sonia Gandhi's to intervene. According to Krishna, another leading member of the campaign, the campaign: '[...] successfully managed to drive a wedge between the PM's office and Sonia Gandhi's office in terms of trying to say that look, there is a great disjunct between the party and the government and the government is trying to subvert us'.<sup>708</sup>

The second National Advisory Council had a completely different composition to the institutions discussed in the previous section. At its helm was the President of the Congress Party, known to be sympathetic to the establishment of a welfare state.<sup>709</sup> Right to Food Campaign members Jean Dreze and Harsh Mander were offered and accepted positions on the Council, with Mander appointed convenor of the 'National Food Security Bill working group' at the first meeting of the NAC in June 2010.<sup>710</sup> Other civil society figures who were either associated with or sympathetic to the goals of the Right to Food Campaign were also appointed to NAC II including Aruna Roy,<sup>711</sup> N.C. Saxena and Miraj Chatterjee.<sup>712</sup> The UPA II government had representatives on the Council as well, most importantly Planning Commission members Narendra Jadhav and Mihir Shah. Among other things, the mandate of India's Planning Commission is to 'play a mediatory and facilitating role' between the states and the ministries of the central government in light of the 'emergence of severe constraints on available budgetary resources [...]'.<sup>713</sup>

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<sup>708</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>709</sup> Sharma, *Democracy and Transparency in the Indian State - the Making of the Right to Information Act*.

<sup>710</sup> National Advisory Council Press Release, 10 June 2010, on file with the author.

<sup>711</sup> Aruna Roy is a well-known civil society activist associated with Mazdoor Kisan Shakti Sangathan (MKSS), a 'people's organisation' (social movement) that works with workers and peasants in rural Rajasthan.

<sup>712</sup> Miraj Chatterjee is a well-known civil society activist and social worker who works at the Self-Employed Women's Association (SEWA) in Ahmedabad in the State of Rajasthan.

<sup>713</sup> Please see the Planning Commission webpage outlining its core functions: <http://planningcommission.gov.in/aboutus/history/function.php?about=funcbody.htm> [accessed 15 Mar. 2018].

In spite of its composition, the second National Advisory Council did not have a free hand in the drafting process. According to the former campaign member Nidhi – who worked closely with Mander and Dreze at various points during the campaign – in contrast to the situation during the first NAC, during NAC II the government managed to ‘ensure [...] that its views were well represented, perhaps because it was better prepared’ (than during the first National Advisory Council).<sup>714</sup> For example, ‘senior Indian Administrative Service officers [were] given a more active role’ and there was ‘much more interaction with various government ministries and departments’.<sup>715</sup> The leading campaign member Anil echoed Nidhi’s observations: ‘In the NAC I, the reason why [...] the first year of the NAC I was so successful was partly because the government was unprepared [...]’.<sup>716</sup> He continued, explaining that by contrast, during the second NAC: ‘It’s not clear to what extent it was organised, but I think that [there] must have been a sentiment that we can’t let the NAC do what they like’.<sup>717</sup> For example:

in the NAC I [the campaign] sometimes [...] had interactions with one or two ministries but [...] never felt that they had to consult a ministry and take on board, yeah? But in NAC II, it was quite different, [the campaign members] were actually kind of asked to act in consultation with ministries to kind of check that they were okay [with the proposals].<sup>718</sup>

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<sup>714</sup> Interview with Nidhi (pseudonym) on 20 March 2016 by telephone.

<sup>715</sup> Ibid.

<sup>716</sup> Interview with Anil (pseudonym) on 27 August 2016, India.

<sup>717</sup> Ibid.

<sup>718</sup> Ibid.

At Reetika Khera has argued, another reason why the first National Advisory Council had more influence than the second was because the first UPA government was dependent on the minor left-wing parties to push through its legislative agenda. The left-wing parties did not join the UPA I coalition, but they entered into an agreement to act as ‘confidence and supply’ partners in respect of critical issues such as voting through the government’s annual budget.<sup>719</sup>

Over the course of the next four months, the campaign and the government battled it out within the NAC, with the NAC publishing its ‘final recommendations’ in October 2010 and its draft bill in July 2011.<sup>720</sup> There were gains and losses on each side, although in comparison to the Food Ministry’s June 2009 concept note and its first draft of the bill, the NAC’s proposals were an immeasurable improvement. While there was to be no (re)universalisation of the Public Distribution System, the NAC recommended opening it up to 75 percent of the population (90 percent of the rural and 50 percent of the urban population). By whatever measure one uses, this was a huge gain for the campaign: eligibility was fixed at 35 percent of the population under the Supreme Court orders and the Food Ministry had proposed reducing this to 27.5 percent. That being said, the Public Distribution System would still be means-tested, meaning that large numbers of people who needed social protection would likely fall through the cracks. No advances were made in terms of the campaign’s bid to diversify the food items available for purchase through the Public Distribution System (to include foods containing protein and fat) or to obligate the state to procure the food for the schemes from India’s small and medium farmers (‘MSP’). On the other hand, all of the Supreme

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<sup>719</sup> Baru, *The Accidental Prime Minister: The Making and Unmaking of Manmohan Singh*.

<sup>720</sup> National Advisory Council draft National Food Security Bill (6 July 2011).

Court order-mandated schemes were to be included in the statute with the exception of the Old Age Pension Scheme. In terms of the new schemes proposed by the campaign, the NAC recommended the adoption of two: the scheme to provide free meals to destitute people and the scheme to set up community kitchens for the homeless.

#### **7.4. Explaining the Gains: ‘The Long March through the Institutions’**

At one level, Sonia Gandhi’s ability to establish a parallel body to take over the drafting of a piece of legislation is related to the specificity of the organisational rules of the Congress Party. Unlike in most political parties, the Congress Party has separate positions for the party leader and the Prime Minister (when, of course, the party is in government). This enabled Congress Party President Sonia Gandhi to vie for power with Congress Party Prime Minister Manmohan Singh. The unorthodox nature of this set up did not go unnoticed by campaign members. The leading campaign member Pramila was concerned about the campaign’s engagement with the National Advisory Council on this basis: ‘They are unconstitutional. [...] So you shouldn’t introduce something into the politics which is actually unconstitutional. So that’s the basic principle’.<sup>721</sup> At the same time, Pramila acknowledged that as that the National Advisory Council *had* been established, the campaign had to engage with it to ‘you know, express our view point [...]’.<sup>722</sup>

On the other hand, Sonia Gandhi’s ability to establish a parallel law-making body and influence the legislative process from inside the system in the interests of India’s poor can be attributed simply to the fact that she was a powerful but progressive political

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<sup>721</sup> Interview with Pramila (pseudonym) on 6 September 2016, India.

<sup>722</sup> *Ibid.*

insider; and the existence of powerful progressive insiders with the capacity to influence institutional processes is not unique to India's Congress Party. In the 1970s, as the prospect of revolutionary change in Europe appeared to fade away, German leftists influenced by the works of Gramsci called for 'student radicals to undertake the long march through the institutions and change the political process from within' thereby 'altering the composition of political elites [...] within those institutions'.<sup>723</sup> The goal of these activists was to 'find a place in the institutions of society [and] bring contestation to bear on those institutions [while] accepting the likely ambiguity of the outcome'.<sup>724</sup> As noted earlier, this approach to social change runs counter to the prescriptions of many human rights critics who shun engagement with formal institutions on the basis that 'formal, institutionalized and legal practices of human rights reflect and sustain the interests of a dominant group in the existing order, while informal, privately motivated and, on occasion, extralegal action reflects the interests of an alternative order'.<sup>725</sup>

The presence of progressive insiders within law-making institutions is almost certainly one reason why such institutions sometimes challenge rather than support power. Unfortunately, however, this hypothesis is difficult to evidence, especially when it comes to the behaviour of the courts, given the convention against judges discussing their cases and rulings in public. Nonetheless, some jurists are convinced that the 'composition of a bench' does influence judicial outcomes. For example, the legal scholar Balakrishnan has remarked that 'it is well recognized by observers of the Indian judiciary that, especially in the area of public interest litigation, outcomes of cases are

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<sup>723</sup> Dalton, "Generational Change in Elite Political Beliefs: The Growth of Ideological Polarization." 144.

<sup>724</sup> Andrew Feenberg, *Great Refusal or Long March: How to Think About the Internet* (London: Routledge, 2014). 13.

<sup>725</sup> Evans, *The Politics of Human Rights : A Global Perspective*. 15.

often dependent on the ideology of individual judges'.<sup>726</sup> For example, the decision to lift the stay order on the construction of the dam in the Save the Narmada case was attributed by the campaign's counsel to the change in the composition of the bench.<sup>727</sup> The ideology of the judges who heard the right to food case may also explain why some of the orders were so progressive. According to Colin Gonsalves, one of the judges who issued the landmark order of November 2001 converting eight government schemes into constitutionally-protected entitlements was 'quoted in the newspapers on assuming office [as Chief Justice] as saying that this Order was one of the most satisfying of his judicial career'.<sup>728</sup>

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<sup>726</sup> Balakrishnan, "Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle." 203.

<sup>727</sup> Ibid.

<sup>728</sup> Human Rights Law Network, *Right to Food*. 10.

## 7.5. Explaining the Losses

This section of Chapter 7 analyses the reasons why the campaign was unable to persuade the National Advisory Council to support all of its claims. Given the composition of the National Advisory Council and the fact that the campaign *was* able to secure many of its objectives, the losses cannot be attributed to the tendency of institutions to reflect and reproduce prevailing relations of power. Three main arguments are put forward in this section to explain the campaign's losses. These are as follows:

- 1) The campaign was unable to demonstrate that the act was affordable;
- 2) The campaign was unable to demonstrate that food grain production in India was sufficient to provide for a universal Public Distribution System; and
- 3) Dreze and Mander lacked a commitment ensure the inclusion of 'MSP' in the proposed act and therefore failed to push for it, in spite of the campaign's official position on this issue.

### 7.5.1. Financing the Right to Food Act

The campaign's inability to secure National Advisory Council support for the universalisation of the Public Distribution System can, it is argued here, be attributed in part to the campaign's inability to demonstrate that the state could finance a universal Public Distribution System.

The UPA II government expressed concerns about the costs associated with the proposed statute from the outset of the law-making process. In the Food Ministry's

June 2009 concept note, the Ministry cautioned that the financial implications of including APL-card holders in the act and providing 35kg of grain to BPL-card holders ‘would be very high’.<sup>729</sup> Subsequently, when the National Advisory Council was drafting its recommendations, the Finance Ministry apparently intervened to get the Old Age Pension Scheme excluded on the basis of cost concerns. Anil explained: ‘the social security pensions being dropped, I think that came from the Finance Ministry. Not in a letter or anything, but informally [...] it was conveyed that look, this won’t happen [because of the costs associated with it]’.<sup>730</sup> The Planning Commission representatives on the National Advisory Council also strongly opposed the universalisation of the Public Distribution System on cost grounds, according to Anil. Anil explained: ‘[T]here were other members [of the NAC] who just wouldn’t hear of [universalisation] like Narendra Jadhav, for example, from the Planning Commission and of course the government wouldn’t hear of it’.<sup>731</sup> Other government bodies also raised concerns about how to finance the proposed. For example, a discussion paper produced the Ministry of Agriculture’s Commission for Agricultural Costs and Prices in 2012 declared that the statute would impose ‘a huge financial burden on an already burdened fiscal system’.<sup>732</sup>

The concerns of the UPA II government were echoed by individuals working for the financial sector, the corporate sector and the business press. These actors put forward one or more of the following interrelated arguments. The first argument was that there

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<sup>729</sup> Ministry of Consumer Affairs, Food and Public Distribution, Concept Note on the proposed National Food Security Bill (9 June 2009). 16.

<sup>730</sup> Interview with Anil (pseudonym) on 27 August 2016, India.

<sup>731</sup> Ibid.

<sup>732</sup> Ashok Gulati, Jyoti Gujral, and T. Nandakumar, "National Food Security Bill: Challenges and Options," (New Delhi: Commission for Agricultural Costs and Prices, Department of Agriculture & Cooperation, Ministry of Agriculture, 2012). 11.



was not enough money in the ‘state coffers’ to finance the act. For example, in August 2013, K.P. Prabhakaran Nair, a high profile agricultural scientist, announced that: ‘Data from the Reserve Bank of India clearly show that the food security bill will lead to empty coffers’.<sup>733</sup> In a similar vein, a former Vice Chairman of Tata Steel (the tenth largest steel-producing company in the world) asserted on the cable news channel CBNC that: ‘Food security is important but the government needs to be able to generate enough wealth in the country to be able to afford food security. [...] The government will not be able to sustain the food security programme if the economy continues to grow at the current rate’.<sup>734</sup> (The reference to the growth rate refers to the fact that GDP growth in India fell to 4.5 percent in the 2012/2013 fiscal year having reached in excess of 9 percent per annum in the 2005 to 2008 period).<sup>735</sup>

The second (related) argument was that in the absence of sufficient funds, the new statute would have to be financed by increasing the fiscal deficit, which would, of course, in turn lead to an increase in the public debt. For example, the (self-styled) ‘economic consultant’ A. Seshan contended in the press that: ‘[T]he government scheme is an exaggerated version of what this writer recommended. It has some serious implications for the country’s fiscal health’.<sup>736</sup> ‘Businessman turned politician’ K.D. Singh, meanwhile, asserted that:

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<sup>733</sup> Prabhakaran K.P. Nair, "The Shaky Food Security Bill," *Vijayvaani.com* 18 August 2013. Available at <http://www.vijayvaani.com/ArticleDisplay.aspx?aid=2913> [Accessed 4 Jul. 2015]. Available at: <http://www.vijayvaani.com/ArticleDisplay.aspx?aid=2913> (accessed: 21 Mar. 2018).

<sup>734</sup> Available at: [http://www.moneycontrol.com/news/business/decisionfood-security-rushed-through-india-inc\\_912480.html](http://www.moneycontrol.com/news/business/decisionfood-security-rushed-through-india-inc_912480.html) (accessed 21 Mar. 2018) .

<sup>735</sup> For the figures and further information please see the Government of India’s Open Government Data Platform at: <https://community.data.gov.in/gdp-growth-rate-of-india-constant-prices-during-2001-02-to-2013-14/> (accessed 21 Mar. 2018).

<sup>736</sup> A. Seshan, "Is the Food Security Programme Workable?," *Business Standard* 21 January 2013. Available at [https://www.business-standard.com/article/opinion/is-the-food-security-programme-workable-110110300029\\_1.html](https://www.business-standard.com/article/opinion/is-the-food-security-programme-workable-110110300029_1.html) [Accessed 18 Sept. 2018]. Available at: [http://www.business-standard.com/article/opinion/is-the-food-security-programme-workable-110110300029\\_1.html](http://www.business-standard.com/article/opinion/is-the-food-security-programme-workable-110110300029_1.html) (accessed: 21 Mar. 2018).

Given that the economy is on a downward trend, the biggest concern for the Government, as before, will be the fiscal deficit. The expenditures on a large policy such as the food security programme will add a sizeable chunk to the fiscal deficit, which would need to be financed.<sup>737</sup>

Similar expressions of concern about the 'fiscal burden' were made by the Confederation of Indian Industry: 'Under the present economic situation, the government can hardly allow the fiscal deficit roadmap to be compromised in any way'.<sup>738</sup> None of these critics mooted the possibility that the act could be financed through means other than increased borrowing.

The third claim was that an increase in the fiscal deficit and the resultant increase in the public debt would undermine economic growth. 'Businessman turned politician' K.D. Singh announced in the press that:

There are various ways a Government can finance growing fiscal deficit. But, in a slow economy the solutions are even more difficult and can further add to the slump. One way or the other, introduction of the food security programme will hamper economic growth.<sup>739</sup>

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<sup>737</sup> K. D. Singh, "Food Disaster Waiting to Happen," *The Pioneer* 23 September 2013. Available at <https://www.dailypioneer.com/columnists/oped/food-disaster-waiting-to-happen.html> [Accessed 18 Sept. 2016]. Available at:

<http://www.dailypioneer.com/columnists/author/kd-singh>(accessed: 21 Mar. 2018).

<sup>738</sup> Quoted in Sabina Alkire, "This Bill Won't Eat Your Money," *The Hindu* 29 July 2013. Available at <https://www.thehindu.com/opinion/op-ed/this-bill-wont-eat-your-money/article4963938.ece> [Accessed 4 Jul. 2015]. Available at: <http://www.thehindu.com/opinion/op-ed/this-bill-wont-eat-your-money/article4963938.ece> (accessed 21 Mar. 2018).

<sup>739</sup> Singh, "Food Disaster Waiting to Happen."

Senior Vice President at Edelweiss Financial Services, Vinay Khattar, similarly claimed in days after the act was passed that by increasing the fiscal deficit the passage of the act ‘could partly hurt the ongoing recovery’.<sup>740</sup> Other commentators expressed concerns that an increase in the fiscal deficit would undermine the confidence of investors. For example, the economist and senior fellow at the Delhi-based think tank, the Centre for Policy Studies, Rajiv Kumar argued that:

It’s not the right time for a move that will surely impact the exchequer’s health. With the economy in dire straits, this gives out the signal that the government doesn’t bother about fiscal health. Its uncanny how the Food Security Bill was passed even as the finance minister came out with a 10-point plan to fix the economy [...] It kicks investor confidence down.<sup>741</sup>

A similar line of argument was made by Professor of Economics at the Indian Institute of Management in Bangalore, Charan Singh, who warned that: ‘International Investors and ratings agencies watch the fiscal trends and are unforgiving in their decisions which ultimately impact foreign investment, especially reliable direct investment’.<sup>742</sup> Equally, the former CEO of Procter and Gamble put forward the argument that:

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<sup>740</sup> Vinay Khattar, "Food Security Bill to Partly Hurt Ongoing Recovery; 1qfy14 Earnings in Focus," *The Economic Times* 6 July 2013. Available at <https://economictimes.indiatimes.com/news/economy/indicators/food-security-bill-to-partly-hurt-ongoing-recovery-1qfy14-earnings-in-focus/articleshow/20942223.cms> [Accessed 1 Feb. 2017]. Available at:

[http://economictimes.indiatimes.com/articleshow/20942223.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/20942223.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst) (accessed: 21 Mar. 2018).

<sup>741</sup> Rajiv Kumar, "The Best Way to Feed the Poor Is to Create More Jobs," *Teheka.com* 7 September 2013. Available at: <http://tehelka.com/the-best-way-to-feed-the-poor-is-to-create-more-jobs/> [Accessed 3 Jul. 2016]. Available at: <http://www.tehelka.com/2013/08/the-best-way-to-feed-the-poor-is-to-create-more-jobs/> (accessed: 21 Mar. 2018).

<sup>742</sup> Charan Singh, "Food Security and Empty Coffers," *The Hindu Business Line* 6 August 2013. Available at <https://www.thehindubusinessline.com/opinion/food-security-and-empty-coffers/article20645827.ece1> [Accessed 19 Sept. 2016]. Available at: <https://www.thehindubusinessline.com/opinion/food-security-and-empty-coffers/article20645827.ece1> (accessed: 21 Mar. 2018).

There are other serious risks associated with the food security bill. The fact is India just cannot afford this colossal spending. The latest budget shows how vulnerable are the nation's finances, and this new spending could well lead to a downgrade of the country's sovereign rating to junk status.<sup>743</sup>

An element of the third argument was that increasing the fiscal deficit would lead to an increase in inflation which would in turn dampen economic growth. For example, Senior Vice President at Edelweiss Financial Services, Vinay Khattar, claimed that while: 'In the medium term, [the act's] social impact will be positive, the economic impact could be slightly negative. Besides increasing the burden on the government finances and fueling inflation, the NFSB could face implementation issues leading to resource wastage'.<sup>744</sup>

The fourth argument put forward by the critics of the proposed right to food law was that by spending money on social protection (a 'subsidy' in the critics' vernacular), the government was, in effect, diverting funds that could otherwise have been used to promote economic growth. Underlying this argument is, of course, the assumption that improving the nutritional status of the population does *not* contribute to economic growth. For example, in March 2010, the Indian author and former Procter and Gamble CEO Gurcharan Das unfavourably compared the decision to enact a right to food law with the Chief Minister of Delhi's decision to refrain from raising electricity subsidies in her state. He asserted:

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<sup>743</sup> Gurcharan Das, "Food Security Bill: Corruption by Another Name," *The Times of India* 31 March 2013. Available at <https://blogs.timesofindia.indiatimes.com/men-and-ideas/food-security-bill-corruption-by-another-name/> [Accessed 10 Jan. 2018].

<sup>744</sup> Khattar, "Food Security Bill to Partly Hurt Ongoing Recovery; 1qfy14 Earnings in Focus."

On the same day as the central cabinet approved the food security bill two weeks ago, Sheila Dixit stood up courageously to defend the rising price of electric power in Delhi. By not raising the power subsidy, Delhi's chief minister was able to increase investment in roads, public transport, education and health care. [...].<sup>745</sup>

According to Das, Dixit's approach would 'lead to productive jobs, better skills and long term prosperity of the people'. This is because it would, 'encourage entrepreneurs to start business, which would create sustainable jobs and raise the state's tax revenues. These taxes, in turn, would make it possible to invest in more public goods. Thus, a virtuous cycle would be created and lift the society's standard of living'.<sup>746</sup>

The validity of the economic arguments laid out above is beyond the scope of this chapter. What seems to be clear, however, is that the Right to Food Campaign's ability to counter them was limited.

Over the past few decades, progressive economists have proposed various ways in which economic and social rights could be financed. In particular, a 2011 study titled *Maximum Available Resources & Human Rights*, published by the Centre for Women's Global Leadership examines the ways in which governments can access financial resources in order to meet their obligation to use the 'maximum available resources' to fulfil economic and social rights as laid out in the International Covenant on Economic, Social and Cultural Rights.<sup>747</sup> The 2011 publication draws on a 'rich set of discussions

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<sup>745</sup> Das, "Food Security Bill: Corruption by Another Name."

<sup>746</sup> Ibid.

<sup>747</sup> International Covenant on Economic, Social and Cultural Rights, Article 2.

between economists and human rights experts'.<sup>748</sup> The authors note that to date, the international human rights community has failed to set out what constitutes 'available resources' beyond stating that it refers to 'both the resources existing within a state as well as those available from the international community through international cooperation and assistance'.<sup>749</sup> The authors proceed to note the importance of the following sources of finance:

- External grants in the form of aid or debt relief;
- Domestic revenue mobilization through improved tax administration or tax policy reforms;
- Deficit financing through domestic and external borrowing; and
- Expenditure reprioritisation and efficiency.

These four financing avenues, as the authors note, are referred to by some economists as the 'fiscal space diamond'. To these four financing avenues the authors of *Maximum Available Resources & Human Rights* add 'monetary space' which depends on central bank policies which influence the interest rate, exchange rates, foreign exchange reserves, reserves in the banking sector, and the regulation of the financial sector. The monetary space influences the resources available to the realization of economic and social rights, for instance, through its impact on the level of employment and the utilization of productive resources.<sup>750</sup>

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<sup>748</sup> Radhika Balakrishnan et al., "Maximum Available Resources & Human Rights: Analytical Report," (New Brunswick: Centre for Women's Global Leadership, 2011). 2.

<sup>749</sup> Ibid. 2.

<sup>750</sup> Ibid.

The Right to Food Campaign and their supporters were unable to and/or decided not to engage with four of the five financing avenues discussed above and focused solely on ‘expenditure reprioritisation’. For example, Sabina Alkire of the Oxford Poverty & Human Development Initiative, writing in the Indian daily *The Hindu*, argued that: ‘These dire warnings seem to overlook the fact that additional expenditures can be offset by cuts elsewhere. It is, as always, a question of priorities’.<sup>751</sup>

Other campaign members and supporters responded to concerns about financing the right to food act by pointing out that other countries – some of which were poorer than India in GDP per capita terms – spent more money on social protection than India. For example, the leading campaign member Biraj Patnaik wrote in the *Business Standard* that ‘[i]n lower middle income countries, relevant expenditures (on social insurance, social assistance, and labour market programmes) are, on average, 3.4 percent of GDP. India’s is a mere half of that at 1.7 per cent’.<sup>752</sup> He continued: ‘Among low income countries, the Kyrgyz Republic (whose GDP per capita is only \$871), invests eight per cent of GDP in social protection’.<sup>753</sup> On the one hand, these arguments about the relative social spending levels in other countries are compelling. However, the author of the article does not explain how these countries finance social spending, they may fail to convince Indian decision makers. What if, for example, the higher levels of social spending recorded in the Kyrgyz Republic can be attributed to external grants in the form of aid or debt relief, a source of financing that is not readily available to an emerging economy such as India.

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<sup>751</sup> Alkire, "This Bill Won't Eat Your Money."

<sup>752</sup> Biraj Patnaik, "Is the Food Security Programme Workable," *Business Standard* 2 November 2010. Available at <http://www.sify.com/finance/is-the-food-security-programme-workable-news-analysis-kldbambibfbsi.html> [Accessed 14 Sept. 2018].

<sup>753</sup> *Ibid.*

Finally, the campaign argued that the governments estimations of the costs associated with the right to food act were inflated. Jean Dreze, for example, asserted in *The Hindu* that ‘Statistical hocus-pocus has been deployed with abandon to produce wildly exaggerated “estimates” of the financial costs of the bill, and no expression seems to be too strong to disparage it’.<sup>754</sup> Sabina Alkire equally argued that ‘One’s confusion is slightly compounded because it seems some critics dramatically exaggerate the cost of the Bill – in order to deem it unaffordable’.<sup>755</sup> According to Alkire’s calculations ‘At present, India spends about 0.9 per cent of GDP on food subsidies, and after the NFSB that will rise to a little less than 1.25 per cent’.<sup>756</sup>

None of the concerns related to an increase in the fiscal deficit, a resultant rise in the public debt, a loss of investor confidence, or a rise in inflation were addressed.

The campaign’s inability to effectively counter the arguments of those who believed that the right to food act would be detrimental to economic development in India underscores the call of heterodox economists such as Cagatay and Elson for rights advocates to integrate the ‘social’ and the ‘economic’ rather than ‘adding’ social policy onto macroeconomic policy as a ‘residual’. According to Elson it has become possible to argue against increased social spending on the basis of harming growth *because* the ‘social and the ‘economic’ have been separated with the ‘social being seen primarily

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<sup>754</sup> Jean Dreze, "From the Granary to the Plate," *The Hindu* 1 August 2013. Available at <https://www.thehindu.com/opinion/lead/from-the-granary-to-the-plate/article4974764.ece> [Accessed 5 Jan. 2018].

<sup>755</sup> Sabina Alkire, "This Bill Won't Eat Your Money," *ibid.* 29 July 2013. Available at <https://www.thehindu.com/opinion/op-ed/this-bill-wont-eat-your-money/article4963938.ece> [Accessed 4 Jul. 2015].

<sup>756</sup> *Ibid.*



as an 'add on'. This is due to ideology on the one hand and fragmented policy making on the other in the sense that 'the Treasury and Social Security department work separately not together'.<sup>757</sup> In order to counter this trend, Cagatay and Elson argue:

An alternative approach to considering social policies as an afterthought to macroeconomic policies would start with the premise that all macroeconomic policies are enacted within a certain set of distributive relations and institutional structures; and that all macroeconomic policies entail a variety of social outcomes which need to be made explicit.<sup>758</sup>

#### 7.5.2. Producing Sufficient Grain for the Right to Food Act

The second reason why the Right to Food Campaign was unable to secure the inclusion of all of its objectives in the National Advisory Council's recommendations, this chapter contends, was because it was unable to effectively counter the contention that grain production in India was insufficient to meet the requirements of a universal Public Distribution System.

As with the government's concerns about financial constraints, the concern about adequate grain production was raised early on, in the June 2009 Food Ministry concept note. After estimating the quantity of food grain required to implement its proposals for the act at approximately 41-42 million tonnes per year, the government asserted that domestic food production was insufficient to provide for larger entitlements than those proposed in the concept note. It also claimed that the quantity of grain needed to implement the government's proposals were so high that imports would be necessary

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<sup>757</sup> Elson and Cagatay, "The Social Content of Macroeconomic Policies." 226.

<sup>758</sup> Ibid. 1347-1348.

from time to time.<sup>759</sup> In the context of food availability concerns, the Food Ministry also raised the possibility that it may be necessary from time to time to provide cash payments to the beneficiaries of the act in lieu of food grain.<sup>760</sup>

Concerns about food grain-production levels re-emerged during the National Advisory Council drafting process. According to the leading campaign member Anil:

One of the big issues [within NAC II] was how far can it go in terms of food grain allocation because some people like Montek [Singh Ahluwalia, Deputy Chair of the Planning Commission] who was, of course, very influential at that time, were very strongly of the view that [the NAC] should not go beyond 48 to 50 million tonnes.<sup>761</sup>

He continued, ‘there was at some point [...] a kind of cap; unspoken understanding if not spoken understanding that the government will not go beyond 60 million tonnes’.<sup>762</sup>

This meant that ‘the NAC was in a sense boxed into a kind of strait jacket where it was trying to manage something within 60 million tonnes’.<sup>763</sup> Where precisely the 60 million tonne figure came from, Anil could not recall, but ‘it came from the government’.<sup>764</sup>

The campaign’s main response to this argument was to point out that ‘actually, the system is quite okay because the procurement level had already reached 60 million

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<sup>759</sup> Ministry of Consumer Affairs, Food and Public Distribution, Concept Note on the proposed National Food Security Bill (9 June 2009).

<sup>760</sup> Ibid.

<sup>761</sup> Interview with Anil (pseudonym) on 27 August 2016, India.

<sup>762</sup> Ibid.

<sup>763</sup> Ibid.

<sup>764</sup> Ibid.

tonnes and [it] was increasing year after year, so it seemed quite feasible. Beyond 60 million tonnes was a bit harder to argue'.<sup>765</sup>

Anil's understanding of the role of (perceived) food grain-production constraints is supported by news reports citing anonymous 'official sources'. Shortly after the NAC's recommendations were published in October 2010, *The Hindu* newspaper reported an 'official source' as saying that '[t]o implement the NAC's two proposals, the grain requirement is estimated to be over 70 million tonnes' and that 'any requirement of the grain over 55 million tonnes would be difficult to meet'.<sup>766</sup> The same article elaborated that the 'latest challenge to the proposed food security law has come from the government's procurement agencies as the Food Ministry procures only 55 million tonnes of foodgrains a year against the 70 MT [million tonnes] required to meet the National Advisory Council's prescription'.<sup>767</sup> It further contended that at the last NAC meeting held on 24 September, 'Planning Commission Deputy Chairman Montek Singh Ahluwalia offered to step up gradually the procurement of foodgrains to about 70 million tonnes to meet the requirements desired by the Council'.<sup>768</sup>

As with the first impediment to securing the inclusion of universalisation in the NAC's recommendations for the bill, the second impediment is *policy fragmentation*-related. In a country like India, food production levels could be increased. As the proponents of the *structural change* approach to the right to food argued, among other things, in

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<sup>765</sup> Ibid.

<sup>766</sup> Press Trust of India, "Low Procurement May Stall NAC's Food Security Law," *The Hindu* 7 October 2010. Available at <https://www.thehindu.com/news/national/Low-procurement-may-stall-NACs-quos-food-security-law/article15771984.ece> [Accessed 3 Jun. 2015].

<sup>767</sup> Ibid.

<sup>768</sup> Ibid.

order to increase food production in India, farmers need secure access to productive resources such as land, water and seeds, stable markets and support for inputs such as fertilisers.<sup>769</sup>

### 7.5.3. The Minimum Support Price

The reason for the campaign's inability to secure an NAC recommendation calling for the food for the schemes to be procured from India's small and medium farmers at a minimum support price ('MSP') is straightforward: the campaign members with positions on the NAC simply didn't try to achieve this goal. According to the leading campaign member Nikhil, the NAC did not really even discuss MSP and the Right to Food Campaign members with positions on the NAC did not push this agenda:

the view that [the NAC] took [was] that, see, the procurement has its own momentum that happens largely under pressure from farmers' organisations and it has been going up by leaps and bounds so basically what the NAC did was to say that, okay, now this procurement is happening, what can we do with it?<sup>770</sup>

This finding is, perhaps, unsurprising given that Jean Dreze and Harsh Mander were staunch supporters of the 'first school of thought' discussed earlier in the thesis: that is, they wanted the proposed act to focus on entitlements, not entitlements and MPS, and certainly not entitlements and a wider set of structural causes of rural poverty.

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<sup>769</sup> Shiva, "The Future of Food: Countering Globalisation and Recolonisation of Indian Agriculture."; Robert Eugene Evenson, Carl Pray, and Mark W. Rosegrant, "Agricultural Research and Productivity Growth in India," (Washington, DC: International Food Policy Research Institute, 1998).

<sup>770</sup> Interview with Nikhil (pseudonym) on 26 August 2016, India.

## 7.6. The Impact of the Campaign's Strategies

The analysis laid out above demonstrates that the campaign was unable to influence the content of the proposed act using 'outsider' strategies such as media advocacy and social mobilisation (holding rallies and demonstrations etc.). It is more or less impossible to ascertain whether the 'insider' strategy of lobbying parliamentarians had any impact on the content of the act given the author's inability to gain access to 'lobbied' parliamentarians who may, in any case, be reluctant to concede that their positions were shaped by civil society actors. The Right to Food Campaign leader Nikhil concurs with the analysis that the social mobilisation and media advocacy had little influence on the content of the act: '[...] I don't think the campaign had much influence on the content of the act. The campaign drafted its own act [...] which is a much more comprehensive and ambitious and so on but that was a kind of parallel exercise and I don't think it had much influence on the act itself'.<sup>771</sup> Had the campaign decided not to take up positions on the NAC, a position some Right to Food Campaign members for, the content of the act that was eventually enacted in 2013 would likely have looked very different.

At the same time, the lobbying and social mobilisation activities did play an important role in securing the enactment of India's right to food act. For one, it was the lobbying by key campaign members that persuaded the Congress Party to include a pledge for a right to food act in its manifesto in the run up to the 2009 parliamentary elections.<sup>772</sup> In

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<sup>771</sup> Interview with Nikhil (pseudonym) on 26 August 2016, India.

<sup>772</sup> Please see Chapter 2.

addition, the social mobilisation seems to have played an important role in keeping the right to food act on the political agenda throughout the UPA II government's 2009 to 2013 parliamentary term. As Anil remarked, the campaign 'creat[ed] the political interest which was, of course, extremely important'.<sup>773</sup> There is also evidence to suggest that the major political parties – both the Congress Party and the BJP – associated Indian civil society's rights-shaped legislative initiatives with their electoral prospects. In particular, the Congress Party's success in the 2009 parliamentary elections at the expense of both the BJP and the minor left-wing political parties was widely attributed to the enactment of the National Rural Employment Guarantee Act in 2005.<sup>774</sup> It is notable that when the right to food bill was reintroduced into parliament in March 2013 – which was, of course, approximately a year before the next parliamentary elections were due to be held – both the Congress Party and the BJP publicly expressed their support for the enactment of a 'strong' right to food act.<sup>775</sup> Right to Food Campaign members interviewed for this study agreed with this analysis. As discussed earlier in the thesis, according to the leading campaign member Bharka, 'the thing is, no political party could afford to say no to this Act. Because [...] after all, it is politics. So everybody, all parties in public they say, "Oh, we are for this!" Along similar lines Krishna remarked: 'Why are the political parties engaging with us? Political parties are engaging with us because we bring them the legitimacy of the people [...] we claim to represent'.<sup>776</sup> 'Even Narendra Modi, now the present Prime Minister,' Krishna added. He continued:<sup>777</sup>

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<sup>773</sup> Interview with Anil (pseudonym) on 27 August 2016, India.

<sup>774</sup> Pamela Price, "Re-Visiting Policy and Political Behavior in India with a View of the National Rural Employment Guarantee Act" (paper presented at the Forum for Development Studies, 2011).

<sup>775</sup> See, for example: Lok Sabha Debates, Part I – Proceedings with Questions and Answers, Monday, August 26, 2013/Bhadrapada 4, 1935 (Saka).

<sup>776</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

<sup>777</sup> Interview with Bharka (pseudonym) on 4 September 2014, India.

And in fact, what happened was that a lot of the BJP endorsed a lot of the campaign positions at that time. That was just posturing on their part, right? In fact, so they tried to come across as big champions of the right to food [...]. There was nothing to it but it's true that in the process of doing that they ended up parroting a lot of the campaign positions.<sup>778</sup>

### **7.7. Summary**

Chapter 7 analysed the legalisation process from the UPA II government's announcement that it would bring a right to food law onto the statute books in June 2009 to the enactment of the right to food law in August 2013. It argued that while the draft bill / the actual bill were in the hands of UPA II-controlled or dominated institutions such as the Food Ministry, the Standing Committee and the legislature, the Right to Food Campaign was unable to influence the content of these documents – but that the course of events changed when a second National Advisory Council was set up to assume control over the drafting process. The chapter also theorised that the campaign was able to make the gains that it made because it had the support of a powerful insider within the NAC which gave it both a voice and genuine influence. Turning to the campaign's inability to persuade the NAC to include all of the campaign's goals in the NAC's recommendations, the chapter argued that three factors were of particular importance. These were as follows: the campaign's inability to allay concerns about the financing of the proposed law; the campaign's inability to convince the National Advisory Council that India produced enough food to meet the needs of a universal Public Distribution System; and the fact that the campaign members who assumed positions on the NAC were not committed to ensuring the inclusion of a

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<sup>778</sup> Interview with Krishna (pseudonym) on 13 August 2014, India.

provision requiring the government to procure all of the food for the schemes from India's small and medium farmers at a 'minimum support price'. Finally, the chapter evaluated the efficacy of the various strategies employed by the campaign, arguing that the lobbying and the social mobilisation did play an important role in the process of securing the enactment of a right to food statute in India.



## Conclusion

This thesis critically analysed the scholarly literature on the construction of human rights law in light of the author's empirical investigation into the creation of India's right to food act. It examined how a coalition of civil society actors, the Right to Food Campaign, *conceptualised* the right to food, *formulated concrete claims* to be made of the state and sought to influence the *legalisation* process, using a combination of 'insider' and 'outsider' strategies. The Right to Food Campaign was unable to achieve all of its goals. At the same time, this relatively small group of strategic actors was able to significantly expand social protection provision for millions of poor people in India in the face of extensive opposition from powerful adversaries within the government, the financial and corporate sectors, and the press. Moreover, the Right to Food Campaign sought to expand social protection in a manner which empowered their constituencies, with the objective of enabling India's poor to access the schemes they were formally entitled to, in spite of the presence of various 'deficits' arising in consequence to inequalities of power, wealth and status. In a country in which malnutrition remains widespread and individuals still die from starvation, this was no small achievement.

The trajectory of the Right to Food Campaign's struggle to expand social protection in India, from the decision that was taken to litigate in 2001 to the enactment of the right to food act in 2013 demonstrates how – as Lockwood observed – rights expand and contract as the balance of power between different protagonists waxes and wanes.

Over the course of the campaign, the decisions that the campaign's members had to make were often stark. Having secured several dozen ground-breaking interim orders from India's Supreme Court, many of the campaign's activists were loath to change course and start to press for statutory legislation. And yet, as the 'Save the Narmada' case illustrates, the courts can be unreliable partners in the quest for social justice. If the courts shift course, civil society groups do not only risk losing the tangible gains that they have made: the moral capital bestowed upon them by virtue of judicial support can also start to dissipate.<sup>779</sup> That being said, a move away from the courts and towards the legislature does not itself come without risks. As in *Mabo*, India's government fought tooth and nail to use the legislative process to roll back the gains that had been made through the courts.<sup>780</sup> Fortunately, however, unlike in *Mabo*, the UPA II government was unsuccessful, because the Right to Food Campaign was able to combine its social mobilisation and media work with the successful elicitation of support from the President of the ruling party.

Turning to the main objective of this thesis: that is, to examine what can be learned about the potential and limitations of human rights by studying the *social processes* involved in the creation of human rights law, there were six main findings, all of which make an original contribution to the interdisciplinary literature on human rights.

The first finding was that although the creation of civic exclusions has been associated with the *legalisation* or *institutionalisation stage* of the human rights law-creation

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<sup>779</sup> Balakrishnan, "Limits of Law in Counter-Hegemonic Globalization: The Indian Supreme Court and the Narmada Valley Struggle."

<sup>780</sup> Samson and Short, "The Sociology of Indigenous Peoples' Rights."

process,<sup>781</sup> the genesis of civic exclusions can also lie in the *conceptualisation stage*. This is because of the way in which ideas of rights tend to be formulated by particular groups in pursuit of particularistic interests. More importantly for the purpose of the objectives of this thesis was the observation that civic exclusions can be created by the metaphorical ‘below’ as well as the metaphorical ‘above’ (or, in the case at hand, on behalf of the metaphorical below by their NGO supporters). This has implications for the burgeoning body of work which has identified and lauded the creation of rights ‘from below’.<sup>782</sup> Scholars within an interest in rights ‘from below’ seem to see the transformation of rights ‘from below’ as a sort of ‘corrective’ to the creation over centuries of rights by the wealthy and the powerful. However, if rights ‘from below’ are not to create or entrench inequalities between already unequal social groups (as rights ‘from above’ have long been guilty of) scholars and activists need to engage with debates on civic stratification and the particularistic nature of rights claims that emerge from social struggles.

The second key finding which makes an original contribution to knowledge is that the watering down or ‘dilution’ of human rights can take place during the *claim-formulation stage* as well as the *legalisation stage* of the human rights law-creation process (the stage during which the dilution of rights is most often associated with in the literature). Indeed, in the case of the Right to Food Campaign’s battle for the enactment of a right to food statute, the *most* radical conceptions of the right to food were filtered out during the *claim-formulation stage* rather than the *legalisation stage*.

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<sup>781</sup> For example, see Stammers, *Human Rights and Social Movements*.

<sup>782</sup> For example, please see Nash, "Is it Social Movements that Construct Human Rights?."; Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance*; De Sousa Santos and Rodriguez-Garavito, *Law and Globalization from Below - Towards a Cosmopolitan Legality*.

If human rights are to advance radical claims which address relative as well as absolute poverty, the reasons why human rights claims are watered down during the *claim-formulation stage* need to be investigated and addressed.

The third finding relates to debates on the consequences of the *legalisation* or *institutionalisation* of human rights (the ‘legalisation thesis’). Numerous scholars have identified cases in which proposals for rights have been thinned out as they passed through law-making or other formal institutions. On the one hand, this study supports the ‘legalisation thesis’. When the right to food bill was in the hands of institutions that were hostile to the creation of an expansive act, its provisions were watered down. This took place in spite of the fact that the campaign held numerous rallies and demonstrations, and conducted extensive media advocacy. However, this thesis also demonstrated that the presence of a powerful political insider – in the case at hand the president of the ruling Congress Party – can disrupt existing power relations and alter the way in which an institution functions in favour of the interests of the disadvantaged. Civil society actors who wish to advance radical claims may, therefore, do well to attempt to secure the support of powerful political insiders as attempt to secure the legalisation of human rights.

The fourth finding which makes an original contribution to the extant human rights literature is that separating the ‘social’ and the ‘economic’ can hinder the expansion of rights. As discussed above, the Right to Food Campaign was unable to secure National Advisory Council backing for the (re)universalisation of the Public Distribution System. This was due in large part to the campaign’s inability to demonstrate that its proposals were affordable in a context where state and private actors were cautioning

that (re)universalisation would undermine economic growth given the existing macroeconomic conditions. This finding validates the long-standing call of heterodox economists such as Elson and Cagatay to integrate the ‘social’ and the ‘economic’.<sup>783</sup> According to Elson, the ‘standard neoliberal approach [has] overemphasized these differences, and made the assumption that each strand of policy could be pursued independently of the other’;<sup>784</sup> and although ‘there is now widespread recognition of the need to integrate macroeconomic management and “social policy”’ many actors still think this means ‘continuing to design what are termed “sound” macroeconomic policies [...] and then “adding-on” social policies [...]’.<sup>785</sup>

The validity of the arguments put forward the state and private actors referred to above is beyond the scope of this study. However, it stands to reason that their contentions may have had less weight if the Right to Food Campaign had been able to demonstrate how the proposed right to food statute could be financed. This would have required the Right to Food Campaign to engage with, and possibly attempt to reshape, macroeconomic policy in India. This is no easy task given that macroeconomic policy, instead of being a ‘vital source of knowledge about human society’, has become an ‘obscure, technocratic field reserved for a select few’.<sup>786</sup>

It is not impossible for civil society actors to meaningfully engage with macroeconomic policy and the financing of economic and social rights, however. As Elson and Cagatay

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<sup>783</sup> Elson, "Social Policy and Macroeconomic Performance: Integrating ‘the Economic’ and ‘the Social’"; Elson and Cagatay, "The Social Content of Macroeconomic Policies".

<sup>784</sup> Elson, "Social Policy and Macroeconomic Performance: Integrating ‘the Economic’ and ‘the Social’". 63.

<sup>785</sup> Ibid. 64.

<sup>786</sup> Matthew McCaffre, Lecturer in Enterprise at the University of Manchester and recipient of the 2010 Lawrence W. Fertig Prize in Austrian Economics cited in Joe Earle, Cahal Moral, and Zach Ward-Perkins, *The Econocracy: The Perils of Leaving Economics to the Experts* (Manchester: Manchester University Press, 2017).

have noted, civil society groups in Canada have worked together to prepare an alternative budget which focuses on macroeconomic policies, making the links between fiscal policy and monetary policy and considering ‘the linkage between global, national and local levels of finance and budgeting’.<sup>787</sup> The Canadian initiative comes up with a complete alternative budget, which looks at taxation as well as monetary policy. It also examines the linkages between levels of finance at the local, national and global levels and budgeting. The Canadian exercise ‘is the most complete initiative to date in terms of the formulation of an alternative budget based on explicitly defined social policy goals, an alternative macroeconomic framework and a participatory process’.<sup>788</sup>

The fifth key finding is that separating production from distribution can negatively impact upon the expansion of rights. This concern – about the relationship between production and distribution – has been raised in the extant literature. However, it has received little discussion in the context of empirical research into a specific case study. The empirical research conducted for this doctoral thesis demonstrated that an additional reason why the Right to Food Campaign was unable to secure National Advisory Council support for the (re)universalisation of the Public Distribution System was because doubts were raised about India’s capacity to grow sufficient food grain for both the Public Distribution Scheme and the needs of the open market. Had the campaign included production-related as well as distribution-related claims in its ‘Essential Demands’, as many campaign members had called for, concerns about food grain production levels in India may not have impeded its work.

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<sup>787</sup> Elson and Cagatay, "The Social Content of Macroeconomic Policies," 1359.

<sup>788</sup> *Ibid.* 1359.

The sixth and final finding that makes a contribution to the existing literature is that *intra*-civil society conflicts and power dynamics can shape human rights law in the same manner in which civil society-state conflicts and power dynamics can. To date, studies relevant to the creation of human rights law have tended to focus on the latter. However, this study demonstrates that the dynamics among civil society actors and the power relations that play out within civil society coalitions can shape or even determine which claims that are put forward to the state not only during the *claim-formulation stage* of the rights-creation process but also during the *legalisation stage*. Here, the moral and material resources available to the different civil society activists involved in a coalition may be of relevance as it is those with the most moral and material resources that are likely to be invited to participate in formal law making processes. This opens up the possibility that they could use their moral and material resources to advance the goals that *they* and not the campaign as a whole deem to be of the most importance.

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